



DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 922

[Docket No. 220415-0098]

RIN 0648-AV85

Amendments to National Marine Sanctuary Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Interim final rule; request for comments

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the National Marine Sanctuaries program regulations. This interim final rule updates and reorganizes the existing regulations, eliminates redundancies across the sanctuary regulations, eliminates outmoded regulations, adopts standard boundary descriptions, and consolidates general regulations and permitting procedures. This rule adopts, with minor revisions and technical changes, the proposed rule previously published in the *Federal Register* on January 28, 2013, and provides further opportunity for comment.

DATES: *Effective date:* This interim final rule is effective on [INSERT DATE 45 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments due date: Comments must be received by NOAA on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NOS-2011-0120, by the following method:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and search for docket

NOAA-NOS-2011-0120. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, will not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Vicki Wedell, NOAA Office of National Marine Sanctuaries, (240) 533-0650, *Vicki.Wedell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Request for Comments

In 1972, Congress passed the National Marine Sanctuaries Act (NMSA), which established the National Marine Sanctuary System (System). The NMSA authorizes the Secretary of Commerce (Secretary) to designate, manage, and protect, as a national marine sanctuary (NMS), any area of the marine environment that is of special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1431 *et seq.*). Since the NMSA was enacted, fifteen national marine sanctuaries have been designated. Day-to-day management of the System is delegated from the Secretary to NOAA’s Office of National Marine Sanctuaries (ONMS). Regulations implementing the NMSA are codified in Title 15, Part 922 of the Code of Federal Regulations (CFR). Part 922 includes general regulations applicable to all sanctuaries (subparts A through E) and site-specific regulations that relate to each individual sanctuary (subparts F through T).

As the System evolved and new sanctuaries were designated, corresponding changes were made to the general and site-specific regulations. In certain instances, these changes produced redundant, inconsistent, outdated, or conflicting regulatory provisions. This rule updates both the general and site-specific regulations, making them more consistent, uniform, concise, organized, and understandable by:

- Reorganizing and consolidating existing general regulations published in subparts A (General), B (Sanctuary Nomination Process), C (Designation of National Marine Sanctuaries), D (Management Plan Development and Implementation, and E (Regulations of General Applicability) into a new subpart A (Regulations of General Applicability);
- Updating and consolidating sanctuary permitting procedures and requirements into a new subpart D (National Marine Sanctuary Permitting), which applies to all sanctuaries unless expressly stated in subpart D or the site-specific regulations;
- Reserving subparts B, C, and E; and
- Making non-substantive, administrative changes to the site-specific sanctuary regulations set forth in subparts F through T of 15 CFR Part 922.

This rulemaking was originally part of NOAA's effort to carry out the directive set forth in Executive Order 13563, "Improving Regulation and Regulatory Review," issued on January 18, 2011. This Executive Order directed all agencies to conduct a retrospective analysis of existing significant regulations and modify, repeal, or streamline (as deemed appropriate) any regulations that might be outmoded, ineffective, insufficient, or excessively burdensome. NOAA conducted a comprehensive review and analysis of the sanctuary regulations as directed and published a notice of proposed rulemaking (78 FR 5998, January 28, 2013). The 60-day comment period on the proposed rule closed on

March 29, 2013. NOAA received 28 written public comments on the proposed rule, which may be viewed on *www.regulations.gov*, under docket ID NOAA-NOS-2011-0120. After reviewing the comments, NOAA in this interim final rule has made minor revisions and technical changes to the rule as proposed. NOAA responses to the public comments are set forth below in Section IV. Responses to Comments.

Although several years have passed since the proposed rule was published, NOAA believes that the organizational and clarifying changes contained in the proposed rule remain relevant and useful, and will make it easier for stakeholders and the public to understand and navigate the NMSA regulations. Indeed, any changes in the NMS landscape since the proposed rule was published likely only makes this rule more useful. Nonetheless, in recognition of the time that has elapsed since the proposed rule, NOAA is issuing this rule as an Interim Final Rule, adopting a 45-day delay in the effective date, and seeking additional public comments to provide NOAA with a further opportunity to consider the potential impact, including any relevant new issues or concerns that may have arisen in the years since the rule was proposed. While this is an Interim Final Rule, NOAA is not relying on “good cause” under the Administrative Procedure Act, 5 U.S.C. 553(b)(B) because NOAA has issued a proposed rule and responded to the comments received on the proposed rule.

NOAA encourages interested persons to submit comments on this interim final rule. NOAA will consider all comments received during the comment period, and may modify the rule in view of the comments, as appropriate.

II. History of this Rulemaking and Summary of the Changes from the Proposed Rule to this Interim Final Rule

In the proposed rule published in January 2013, NOAA anticipated that changes to the final rule might be necessary (78 FR 5998, January 28, 2013). Scoping for

regulatory revisions to the Florida Keys NMS, Thunder Bay NMS, Hawaiian Islands Humpback Whale NMS, and Monitor NMS were concurrently underway. In the years following the publication of the proposed rule, NOAA finalized other revisions to the general and site-specific sanctuary regulations as follows:

- 2014: Amended the Thunder Bay regulations (79 FR 52960, September 5, 2014); Established a new Sanctuary Nomination Process (79 FR 33851, June 13, 2014); and Updated the regulations and management plan for Gray's Reef NMS (79 FR 41879, July 18, 2014).
- 2015 and 2018: Revised the Greater Farallones (formerly the Gulf of the Farallones) NMS and Cordell Bank NMS regulations (80 FR 13077, March 12, 2015, 83 FR 55956, November 9, 2018).
- 2016: Withdrew the Hawaiian Humpback Whale proposed amendments (81 FR 13303, March 14, 2016).
- 2019: Designated a new sanctuary, Mallow's Bay-Potomac River NMS (84 FR 32586, September 26, 2019).
- 2021: Expanded Flower Garden Banks NMS (86 FR 4937, January 19, 2021); and designated a new sanctuary, Wisconsin Shipwreck Coast NMS (86 FR 32737, June 23, 2021).

During the intervening time between the proposed and this interim final rule, NOAA commenced several regulatory actions that took higher or competing precedence over finalizing this rule. NOAA geographically expanded and revised regulations for four sanctuaries (Thunder Bay NMS, Greater Farallones NMS, Cordell Bank NMS, and Flower Garden Banks NMS). NOAA also completed the management plan review and revised regulations for Gray's Reef NMS. NOAA proposed and

ultimately withdrew an expansion for Hawaiian Islands Humpback Whale NMS. NOAA also established a new sanctuary nomination process and designated two new sanctuaries (Mallows Bay-Potomac River and Wisconsin Shipwreck Coast NMS). Each of these rulemakings involve changes to the general and site-specific regulations. As such, choosing an ideal time to finalize this regulatory action presented logistical challenges. In this rule, NOAA harmonizes the separate regulatory actions identified above and makes conforming changes to the general and site-specific regulations.

As described below, the changes between the proposed rule and this rule fall into four distinct categories: A. Include Sanctuary Nomination Regulations in this Interim Final Rule; B. Definitions That Will Remain in the Site-Specific Regulations; C. Revisions to Florida Keys NMS Site-Specific Regulations; and D. Other Conforming, Technical, and Administrative Changes.

A. Include Sanctuary Nomination Regulations in this Interim Final Rule

The proposed rule, published in January 2013, included several revisions to the then-existing procedural sanctuary regulations governing the identification, evaluation, and designation of new sites as national marine sanctuaries. Specifically, NOAA sought to re-organize and modify the regulatory text in the then existing subpart B (Sanctuary Evaluation List), eliminate and reserve most of the then existing subpart C (Designation of National Marine Sanctuaries), and eliminate subpart D (Management Plan Development and Implementation).

In a separate rulemaking finalized in 2014, NOAA issued new regulations establishing the Sanctuary Nomination Process (SNP) (79 FR 33851, June 13, 2014). The SNP final regulations eliminated the site evaluation list that was no longer active, and established a new process for communities to submit marine and Great Lakes sites for consideration as national marine sanctuaries. This final rule reorganizes the sanctuary regulations and includes, without change, the 2014 SNP final regulations. The SNP

regulations currently set forth in subpart B, sections 922.10 and 922.11, are being moved to subpart A, sections 922.12 and 922.13, respectively. The SNP regulations were promulgated in accordance with the APA, this rule is a simple recodification of the current SNP regulations, and is consistent with the underlying recodification effort described in the January 2013 proposed rule for this action.

B. Definitions That Will Remain in the Site-Specific Regulations

In the *Federal Register* notice published in January 2013, NOAA proposed to:

- Consolidate, into the new subpart A, the site-specific definitions of “motorized personal watercraft (MPWC)” and “personal watercraft;”
- Move the definition of “oceangoing ship” from the site-specific regulations to the new subpart A;
- Move the definition of “Federal project” from the site-specific regulations to the new subpart A;
- Consolidate the site-specific definitions of “traditional fishing” into the new subpart A; and,
- Consolidate site-specific definitions for the terms “stowed and not available for immediate use” and “not available for immediate use” into the new subpart A.

For the reasons set forth below, NOAA is not consolidating these definitions into subpart A. Instead, each definition will remain unchanged in its respective site-specific regulatory section (subparts F through T).

1. Motorized personal watercraft (MPWC)

During the comment period, NOAA received public comments that revealed that consolidating the definitions of MPWC and “personal watercraft” could create undesirable inconsistencies under the site-specific regulations for Channel Islands

NMS, Greater Farallones NMS, Monterey Bay NMS, and the Florida Keys NMS and expand the number and types of vessels that could potentially be banned or restricted (*see* Comment 18 in Section IV. Responses to Comments). This matter cannot be easily resolved in this rulemaking. As such, NOAA believes more time is needed to gather more information, engage stakeholders and the sanctuary advisory councils, develop an alternative consolidated definition, and thoroughly evaluate the environmental impacts associated with such a consolidated definition. Therefore, NOAA has decided not to consolidate the definitions of MPWC and “personal watercraft.” The existing definitions of MPWC set forth in 15 CFR 922.71 (Channel Islands NMS), 922.81 (Greater Farallones NMS), and 922.131 (Monterey Bay NMS), and the existing definition of “personal watercraft” in 922.162 (Florida Keys NMS) shall remain unchanged at this time.

2. Oceangoing ship

Due to concerns raised during the comment period about the scope of the definition “oceangoing ship” and its potential application to Department of Defense vessels, NOAA is not moving “oceangoing ship” from the site-specific regulations at 15 CFR 922.71 (Channel Islands NMS) to the general regulations in the new subpart A (*see* Comment 30 in Section IV. Responses to Comments). The definition for “oceangoing ship” set forth in the site-specific regulations at 15 CFR 922.71 shall remain unchanged at this time.

3. Federal project

NOAA is not moving “Federal project” set forth in the site-specific regulations at 15 CFR 922.132 (Monterey Bay NMS) to the general regulations in the new subpart A because it might conflict with or create confusion with other similar terms, such as the undefined term “Federal water resource development projects,” used in the site-specific regulations at 922.163 (Florida Keys NMS). Accordingly, the definition for

“Federal project” set forth in the site-specific regulations at 15 CFR 922.132 will remain unchanged and will not be moved to the general sanctuary definitions at 15 CFR 922.11 at this time.

4. Traditional fishing

NOAA received adverse comments on its proposal to consolidate into the new subpart A the definitions of “traditional fishing,” which are found at 15 CFR 922.141 (Stellwagen Bank NMS), 922.162 (Florida Keys NMS), and 922.191 (Thunder Bay NMS). The commenters indicated that it was inappropriate to apply the definition from Florida Keys, Thunder Bay, and Stellwagen Bank across the entire System because fishing conducted by certain Native Americans and indigenous people in the American Samoa or Hawaiian Island Humpback Whale sanctuaries likely do not meet the definition of “traditional fishing” (*see* Comment 17 in Section IV. Responses to Comments). NOAA agrees with the comment and is not consolidating the definition of “traditional fishing” into the general regulations. At this time, the definition of “traditional fishing” will remain unchanged in the site-specific regulations for Stellwagen Bank, the Florida Keys, and Thunder Bay.

5. Stowed and not available for immediate use

NOAA decided not to adopt a single consolidated definition for the terms “stowed and not available for immediate use” and “not available for immediate use.” The former terms and separate definitions will remain in the site-specific subparts for Channel Islands NMS and Gray’s Reef NMS. The latter term will remain in the site-specific subpart for Florida Keys NMS. NOAA determined that there would have been substantive implications for certain prohibitions in Florida Keys NMS regulations that refer to the term “not available for immediate use” that NOAA did not propose to update in the notice of proposed rulemaking. Because NOAA did not propose the associated

revisions to those prohibitions, NOAA is not moving forward with the consolidated definition at this time.

C. Revisions to Florida Keys NMS Site Specific Regulations

In the *Federal Register* document published in January 2013, NOAA proposed to consolidate its sanctuary permitting procedures and review criteria in a new Subpart D, and revise and adopt uniform areal estimates and boundary coordinates. In August 2019, NOAA released a Draft Environmental Impact Statement (referred to as the “Restoration Blueprint”) as part of an ongoing process to propose changes to the Florida Keys NMS site-specific regulations (84 FR 45728, August 30, 2019). Since NOAA is considering comprehensive changes to the Florida Keys NMS site-specific regulations, NOAA is not updating the Florida Keys NMS boundary coordinates or making technical corrections to the references to the Florida Administrative Code at this time. However, NOAA is updating the site-specific Florida Keys NMS regulations (15 CFR part 922, subpart P) to reference the general permitting regulations now in subpart D and is retaining certain site-specific permit language and review criteria set forth in subpart P.

D. Other Conforming, Technical, and Administrative Changes

The conforming, technical and administrative changes from the proposed rule that are described in this section merely recodify existing regulations or make technical corrections.

- NOAA updates a statutory reference in the definition of “fish” to correctly refer to a specific section of the Magnuson-Stevens Fishery Conservation and Management Act where the term appears (16 U.S.C. 1802(12)).
- NOAA revises the definition of “harmful matter” to include “hazardous substances defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and designated at 40 CFR 302.4.” The language in the proposed rule previously read “and those

contaminants (regardless of quantity) listed pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act at 40 CFR 302.4.” NOAA changes the definition to use the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) term of art “hazardous substance.” The regulations implementing CERCLA cover designated hazardous substances that consist of “listed” and “unlisted substances.” NOAA did not intend to limit the scope of the harmful matter definition to only the listed CERCLA substances. NOAA also clarifies that this definition refers to harmful matter that poses the threat “of injury” to sanctuary resources or qualities.

- NOAA updates references in the site-specific regulations from “seabed” to “submerged lands,” where appropriate. This technical amendment updates regulatory text to align with the sanctuaries’ terms of designation for those sites that now use the term “submerged lands” (Channel Islands NMS, Greater Farallones NMS, Gray’s Reef NMS, Cordell Bank NMS, and Monterey Bay NMS). There are four sites (Flower Garden Banks NMS, Stellwagen Bank NMS, Hawaiian Islands Humpback Whale NMS, and Florida Keys NMS), whose terms of designation provide authority to regulate activities that affect the “seabed.” For those four sites, NOAA is not changing the regulatory text and is keeping the term “seabed” in the site-specific regulations.
- NOAA corrects an inadvertent omission from the proposed rule which left out of proposed Subpart D - National Marine Sanctuary Permitting the regulatory provision at 15 CFR 922.48(e) that states that permits are not transferable. The provision that permits are non-transferable has historically existed in all NOAA sanctuary regulations. The language was first introduced in 1975 with the interim final rule for the designation of Monitor NMS (40 FR 5349, 5350, February 5, 1975). NOAA adopted the permit procedures in all subsequent sanctuary

regulations and later consolidated them into 15 CFR Part 922 in 1995 (60 FR 66875, December 27, 1995). This final rule moves section 922.48(e) to section 922.33(b).

- NOAA updates the site-specific regulations for Greater Farallones NMS at 15 CFR 922.82(d), and Cordell Bank NMS at section 922.112(d) to reference the new subpart D on permit regulations. The proposed rule inadvertently omitted these conforming changes to the regulatory text for both sites (*see* 78 FR 6017, January 28, 2013).
- NOAA amends the Gray's Reef NMS site-specific regulations by: revising paragraph (c) of section 922.92 to reference the new subpart D on permit regulations; and corrects a cross-reference in 922.93(a) which should refer to 922.92(a)(1) through (11) and the new subpart D. In 2014, the Gray's Reef NMS site-specific regulations were revised to clarify the anchoring prohibition and provide an exemption to allow the use of weighted marker buoys continuously tended by vessel operators during lawful fishing or diving activities in section 922.92 (79 FR 41879, July 18, 2014). The cross-references in section 922.93 were not updated during the publication of the 2014 final rule for Gray's Reef NMS, but are being updated now.
- NOAA adds a cross-reference to section 922.36 in the Monterey Bay NMS site-specific regulations at paragraph 922.132(e).
- NOAA clarifies in section 922.37(a)(1) that an applicant or holder of a certification of any existing lease, permit, license or right of subsistence access pursuant to 922.10 may file an appeal of the conditioning, amendment, suspension or revocation of a certification. The proposed rule limited the appellant pool to any "person requesting certification." The technical change makes clear that both

applicants and holders of certifications may appeal, and makes the regulations consistent with existing practice.

- NOAA removes the reference to certifications in section 922.163(f). The existing regulation contains a cross-reference to an obsolete and outdated regulation that was re-designated (66 FR 4370, January 17, 2001) and subsequently removed from the Florida Keys NMS site-specific regulations in 2009 (74 FR 38093, July 31, 2009).
- NOAA removes and reserves section 922.194 because the section is no longer applicable. Section 922.194 gave the Director authority to allow certain otherwise prohibited activities to continue in the Thunder Bay NMS if such activity was specifically authorized by a valid Federal, state, or local lease, permit, license, approval or other authorization or valid right of subsistence use or access in existence on the effective date of sanctuary designation. This section is no longer applicable because the affected entities were allowed ninety (90) days from the designation of the sanctuary (September 25, 2000) or expansion (February 3, 2015) to notify the Director and request certification of any pre-existing and otherwise prohibited activities being conducted pursuant to a valid authorization in the sanctuary. The certification period has expired, and the implementing regulations are obsolete.
- NOAA designated Mallow's Bay – Potomac River NMS, which became effective in September 2019 (84 FR 50736, September 26, 2019). The site-specific regulations for Mallow's Bay - Potomac River NMS are codified at 15 CFR part 922, subpart S. References to the site-specific subparts in the new subpart A and subpart D are updated to reflect the addition of subpart S. Regulations on permit procedures set forth at section 922.205 are consolidated without change to the new subpart D. NOAA added an address for the submission of permit applications

at paragraph 922.205(b). NOAA also corrected a reference in paragraph 922.206(a) that should refer to section 922.10 for certifications.

- NOAA designated Wisconsin Shipwreck Coast NMS, which became effective on August 16, 2021 (86 FR 45860, August 17, 2021). The site-specific regulations for Wisconsin Shipwreck Coast NMS are codified at 15 CFR part 922, subpart T. References to the site-specific subparts in the new subpart A and subpart D are updated to reflect the addition of subpart T. NOAA added an address to subpart T for the submission of permit applications at paragraph 922.215(b). Regulation on permit procedures set forth at 922.215 are consolidated without change to the new subpart D. Site-specific regulations on certifications set forth at 922.216 are modified to make conforming edits to reference 922.10 for the program regulations on certifications and to reference 922.37 on the appeals process.
- NOAA updates the office addresses for Monitor NMS (922.62(b)), Channel Islands NMS (922.74(b)), Monterey Bay NMS (922.132(c)(1)), Stellwagen Banks NMS (922.143(b)), Olympic Coast NMS (922.153(b)), and Florida Keys NMS (922.166(a)(1)).

III. Summary of the Final Regulations

A. Boundary Descriptions

With this rule, NOAA is adopting a uniform standard for describing the overall area of each sanctuary. In addition to using the proposed unit of measurement of square nautical miles, abbreviated as nmi², NOAA also provides in parentheses the area in square statute miles, abbreviated as sq. mi. The converter NOAA uses to convert nmi² to sq. mi. is $1 \text{ nmi}^2 = 1.3243 \text{ sq. mi.}$ For example, the area estimate of Monterey Bay NMS will now read as “4601 nmi² (6093 sq. mi.).”

NOAA corrects the area estimate for Channel Islands NMS, which was mistakenly published in the proposed rule as 1128 nmi² but should have been 1110 nmi².

NOAA revises area estimates for Thunder Bay NMS, Greater Farallones NMS, and Cordell Bank NMS, in accordance with the final rules that expanded each sanctuary (79 FR 5291, September 5, 2014; 80 FR 13077, March 12, 2015 respectively).

NOAA retains the one-mile diameter boundary description for Monitor NMS because it is unique in that it is in a circle shape centered at specific coordinates. However, NOAA is currently considering revising the Monitor NMS boundary, which would be initiated through a separate rulemaking (81 FR 879, January 8, 2016).

With this rule, NOAA also converts the existing geographic coordinates to decimal degrees as calculated using the North American Datum of 1983. The conversion also includes updates to geographic coordinates for special zones of sanctuaries. The revised geographic coordinates discussed in this notice can be viewed and downloaded from <https://sanctuaries.noaa.gov/library/coordinates.html>, or obtained upon request at the address listed in the ADDRESSES section of this final rule.

B. Extend the deadline for draft sanctuary fishing regulations

With this rule, and as proposed in January 2013, NOAA moves the existing 922.22(b) to the newly amended section 922.3 and extends the deadline from 120 days to 180 days for a Regional Fishery Management Council (RMFC) to respond to the Secretary's request for draft sanctuary fishing regulations. NOAA believes this additional time provides the RMFC with a more realistic timeframe to meet, vote, and develop fishing regulations for the sanctuary. NOAA provides additional information in section IV. Responses to Comments (Comment 9).

C. Definitions

In this rule, section 922.3 is renumbered as section 922.11, and as previously explained above, NOAA revises the general and site-specific regulations to: 1) Eliminate a definition in the regulations that is not being used; 2) Create definitions for terms that are used throughout the sanctuary regulations but were not defined; 3) Modify

proposed definitions based on public comment; 4) Move terms without change from site-specific definition sections to the new section 922.11; 5) Amend definitions of existing terms; and, 6) Consolidate definitions.

Unless otherwise noted, the newly defined terms and the consolidated definitions are used in multiple site-specific regulations with consistency such that no impacts are anticipated. The definition for “Washington Coast treaty tribe” is the only term that is unique because it solely applies to the Olympic Coast National Marine Sanctuary. However, the definition for “Washington Coast Treaty tribe” appears in the general regulations to provide context since the term is referenced as a general permit category in section 922.30.

1. Eliminate two definitions in the regulations that are not being used

In this rule and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA is eliminating the term “fish waste” from the general definitions because it is not used in any of the general or site-specific regulations. NOAA also eliminates the definition for “tropical fish” in section 922.11. As the only site that uses the term, the site-specific regulations for Florida Keys NMS will retain its definition of “tropical fish” at section 922.162. The State of Florida manages marine life species, including tropical fish, as identified in Rule 68B-42.001 of the Florida Administrative Code. Because NOAA references the state-identified species for the sanctuary’s definition of “tropical fish” in the Florida Keys NMS site-specific regulations, NOAA maintains unchanged a site-specific definition of “tropical fish” at section 922.162.

2. Create definitions for terms that are used throughout the sanctuary regulations but were not defined

The terms “abandoning” and “effective date” are two terms that are used throughout the existing sanctuary general and site-specific regulations, however, neither term was defined. In this interim final rule, and as stated in the proposed rule (78 FR

5998, January 28, 2013), NOAA now defines both terms and adds them to section 922.11.

a) Abandoning

In this rule, the definition of “Abandoning” proposed in January 2013 remains unchanged and is reflected in revised section 922.11..

b) Effective date

In this rule, NOAA modifies the proposed definition of “effective date” to clarify and better track with related language in NMSA section 304(b) “Taking effect of designations.” Section 304(b) of the NMSA (16 U.S.C. 1434(b)) provides that a designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress, beginning on the date on which this federal rulemaking is published, unless the Governor of any State in which the national marine sanctuary is partially or entirely located certifies to the Secretary of Commerce during that same review period that the designation or any of its terms is unacceptable, in which case the designation or any unacceptable term shall not take effect. The delayed effective date for sanctuary designations under the NMSA is longer than that normally applied to final rules issued pursuant to section 4(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)). For other regulatory actions taken under the NMSA, which do not involve a designation or expansion, the normal APA rules concerning the effective date would continue to apply. As stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA added the term “effective date” to the definition section because “effective date” was a term used throughout the sanctuary regulations which was not defined. The definition ensures that “effective date” is interpreted in a manner consistent with the NMSA.

Since publication of the proposed rule, NOAA has completed several rulemakings involving sanctuary expansions and a sanctuary designation (*see* Section II.

History of this Rulemaking and Summary of the Changes from the Proposed Rule to the Final Rule). These rulemakings required NOAA to interpret NMSA section 304(b) and apply its requirements in determining an “effective date” of the final regulations and ensure compliance with the NMSA. NOAA revises the definition to make technical changes to make the language more consistent with the statutory language in NMSA section 304(b). NOAA clarifies that the effective date is the date described in the Federal Register notice promulgating the regulations or, for newly designated sanctuaries or any revisions to the terms of designation for existing sanctuaries, “the date after the close of the review period of the 45th day of continuous session of Congress,” and that it follows the submission of the “Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law.” NOAA also removed the word “proposed” in the second sentence because it was confusing to use it in conjunction with describing final regulations for the designation of a new sanctuary or revising the terms of designation.

The revised definition of “Effective Date” is reflected in revised section 922.11.

3. Modify proposed definitions based on public comments

NOAA modifies the general regulations’ proposed definitions for the terms “injure,” “sanctuary resource,” and “take or taking” based on public comments.

a) Injure or injury

NOAA updates the definition of “injure” to also include “injury” because that term appears throughout the regulations. However, NOAA is no longer including the phrase “or impairment of a sanctuary resource service” found in the proposed definition of “injury.” NOAA received comments reflecting confusion about the purpose of this addition, including concerns that NOAA was seeking to expand its NMSA enforcement authorities. NOAA disagrees that this proposed language would have expanded NOAA’s

authority, but finds that it is unnecessary to change the definition. As explained in the proposed rule, NOAA proposed to add “impairment of a sanctuary resources service” to the definition of injury in order to recognize the importance of protecting sanctuary resource services. A resource service is a function performed by a sanctuary resource for the benefit of another sanctuary resource or the public (*e.g.*, seagrass providing habitat and food for fish, or a coral reef providing recreational opportunities for members of the public who enjoy snorkeling). The statutory purpose of the NMSA already emphasizes the importance of “maintain[ing] for future generations the habitat, and ecological services” of the living resources in the sanctuaries. 16 U.S.C. 1431(a)(4). The statute also already provides NOAA the authority to seek damages for “lost use of a sanctuary resource,” which embodies the concept of losses of sanctuary resource services. 16 U.S.C. 1432(6). Despite this, NOAA has decided not to incorporate it into the regulations at this time, but NOAA will continue to work with agency partners and stakeholders to help them better understand the definition.

The definition of “injure or injury” is reflected in revised section 922.11.

b) Sanctuary resource

NOAA updates the definition of “sanctuary resource” by adding clarifying text “national marine” before “sanctuary,” and including the terms “maritime heritage, cultural, archeological, and scientific” resources for consistency with the statutory definition (*see* 16 U.S.C. 1432(8)). NOAA also updates the definition by replacing “the substratum of the area of the sanctuary” with “waters of the sanctuary, the seabed or submerged lands of the sanctuary.” NOAA added the term “seabed” in the previous phrase to be inclusive of those sites that use that term in their site-specific regulations and terms of designation.

Within this rule and as previously stated in the proposed rule, the definition of “sanctuary resource” is modified by replacing the term “seabirds” with

“birds.” When birds – seabirds, migratory birds, or water fowl – transit through the sanctuary they become part of the sanctuary resources that fall under the protection of NOAA consistent with the NMSA. Current prohibitions in four sanctuaries already regulate birds rather than limiting the class of protected animals to “seabirds” (Greater Farallones NMS, Cordell Bank NMS, Monterey Bay NMS, and Florida Keys NMS). The remaining four sanctuaries (Channel Islands NMS, NMS of American Samoa, Stellwagen Bank NMS, and Olympic Coast NMS) that discuss seabirds rather than birds in their prohibited activities sections already adopt by reference the list of protected species under the Migratory Bird Treaty Act (MBTA, listed at 50 CFR 10.13), which does not distinguish between seabirds and non-seabirds. Therefore, NOAA finds that the class of protections does not change with this clarification, and that finalizing this update meets the purposes of E.O. 13563 by streamlining the regulations to use consistent terms throughout. No new prohibitions are imposed with this update.

Consistent with the January 13, 2013 proposed rule, in this interim final rule, NOAA incorporates the phrase, “or parts or products thereof” after “any living or non-living resource of a national marine sanctuary.” This was added to ensure that protected resources are not dismembered and removed. NOAA harmonizes the definition with the sanctuary regulation of take, which includes “parts thereof.” In addition, NOAA includes reference to the newly-designated Wisconsin Shipwreck Coast NMS. As a result of public comment, NOAA revised the definition of “sanctuary resource” as reflected in revised section 922.11.

c) Take (taking or taken) of a marine mammal, sea turtle, or bird

The proposed rule sought to reformat and update the existing definition of “take or taking.” The proposed definition of “take or taking” also included a fourth provision to clarify that the definition did not only apply to marine mammals, sea turtles, or birds, but also applied to other sanctuary resources. In response to public comments

concerned that the proposed definition of “take or taking” expanded the scope of the existing regulatory prohibitions (*see* Comment 24 in Section IV. Responses to Comments), NOAA is revising the proposed definition by eliminating the fourth provision. For other site-specific regulations that prohibit take of other living or non-living sanctuary resources (*e.g.* 15 CFR 922.112(a); 922.132(11)(i); 922.163(a)(2), (5); 922.164(d)(ii)), the plain language reading of the term “take (taking or taken)” will continue to apply. NOAA does not intend to expand the existing scope of the term “take.”

With this rule, NOAA also clarifies that the term “take” is inclusive of the terms “taking” and “taken,” as both terms are used throughout the site-specific regulations. For instance, Channel Islands NMS regulations at 15 CFR 922.72(a)(9) and (10) identify the following as prohibited or otherwise regulatory activities, “[t]aking any marine mammal, sea turtle, or seabird within or above the Sanctuary” and “[p]ossessing within the Sanctuary (regardless of where taken from, moved, or removed from) any marine mammal, sea turtle, or seabird.” Monterey Bay NMS, Stellwagen Banks NMS, Olympic Coast NMS, and Hawaiian Island Humpback Whale NMS all have similar prohibitions, which serve as additional examples.

The revised definition of “take (taking or taken)” applies only to marine mammals, sea turtles and birds. The definition also incorporates “take” as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1532(19); ESA), “take” as that term section 3(13) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1362(13); MMPA), and activities prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703; MBTA). Eight sanctuaries (Channel Islands NMS, Greater Farallones NMS, Cordell Bank NMS, Monterey Bay NMS, Stellwagen Bank NMS, Olympic Coast NMS, Florida Keys NMS, and Hawaiian Islands Humpback Whale NMS) already incorporate one or more of these statutes in their site-specific regulations that prohibit “take.” Therefore, NOAA

determined that the scope of the existing regulatory authority is not broadened by adopting the statutes by reference.

NOAA also recognized that the proposed definition inadvertently omitted a provision that is contained in the existing definition. Therefore, NOAA adds to the revised definition of take the inadvertently-omitted provision concerning the collection, restraint or detainment, tagging, or operation of a vessel or aircraft that results in disturbance or molestation of any marine mammal, sea turtle, or bird.

The revised definition is reflected in revised section 922.11.

4. Move terms without change from site-specific definition sections to the new section 922.11

In this rule and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA moves the following terms and corresponding definitions from site-specific definition sections to section 922.11 without change: “attract or attracting,” “clean,” “cruise ship,” and “lawful fishing.”

NOAA moves the definition for “introduced species” from four site-specific sanctuary regulations (Channel Islands NMS, Cordell Bank NMS, Greater Farallones NMS, and Monterey Bay NMS) without change, and from the NMS of American Samoa regulations with a technical modification that does not change the meaning or application of the definition. Specifically, this consolidated term was inadvertently omitted from the preamble discussion of the proposed rule, but was shown in the proposed list of definitions under the new section 922.11, and in the two sanctuaries that had definitions sections reprinted, the definition is shown as removed (Monterey Bay NMS and the NMS of American Samoa) (78 FR 5998, January 28, 2013). As such, NOAA finalizes the recodification of this definition to the general regulations with this action.

5. Amend definitions of existing terms

In this rule and as stated in the proposed rule (78 FR 5998, January 28, 2013), NOAA amends the definitions of the following existing terms in the general definitions section 922.11 as follows:

a) Benthic community

NOAA updates the regulatory definition of “benthic community” by adding “sea/ocean/lake” before “bottom” to reflect the appropriate descriptive term, depending on the sanctuary. In this rule, NOAA defines the term “benthic community” is reflected in revised section 922.11.

b) Conventional hook and line gear

NOAA updates the term “conventional hook and line gear” by removing the phrase “from aboard a vessel or” from the definition, and replacing the descriptor “hand- or electrically operated, hand-held or mounted” with “hand, electrically, or hydraulically operated, regardless of whether mounted,” and replacing the descriptor “fishing apparatus” with “fishing gear.” The change is designed to track common fishing practices (*e.g.*, conventional hook and line fishing may occur from shore, from a bridge) and improve the description of the various fishing gear and methods captured in the definition of “conventional hook and line gear.” NOAA replaces the term “bottom longline” with the term “longline” in the last sentence of the definition of “conventional hook and line gear.” Since longline is a single line fitted with a series of offshoot lines along its entire length, it does not fit within the definition of “conventional hook and line gear.” By removing the word “bottom” from the definition, NOAA hopes to eliminate confusion that might exist and clarify that longline is not regarded as “conventional hook and line gear” particularly in Flower Garden Banks NMS. In Flower Garden Banks NMS, “conventional hook and line gear” is an exception to various regulatory prohibitions relating to the discharge or deposit of material within the sanctuary, injuring fish, whale

shark and other sanctuary resources identified in the site-specific regulations at 922.122(a)(3)(i)(A) and (a)(7)-(10). In this rule, “conventional hook and line gear” is reflected in revised section 922.11.

c) Commercial fishing

NOAA modifies the term “commercial fishing” to include the phrase “including any attempt to engage in such activity.” The modification clarifies that the term “commercial fishing” not only applies to an activity that results in the sale or trade of fish, shellfish, algae or corals, but also applies to “any attempt” to sell or trade fish, shellfish, algae or corals for profit. Commercial fishing is reflected in revised section 922.11.

d) Cultural resource and historic resource

NOAA does not add the phrase “but not limited to” in the definition of the terms “cultural resource” and “historical resource.” Although the intent was to clarify that the list of resources are examples, the definitions are sufficiently broad to include the resources of concern to NOAA. The legal citation for the National Historic Preservation Act, which is already referenced in the existing definition, has been added to the definition of “historical resource” as it relates to the use of the term “historic property.” NOAA also makes technical edits to make the terms and the examples drafted in the singular. The definition also clarifies that a “cultural resource” may be considered a “historical resource.” The two terms are reflected in revised section 922.11.

e) Director

NOAA updates the office reference for the definition of “Director.” Under the previous definition, the term “Director” referred to the “Director of Ocean and Coastal Resource Management, NOAA or Designee.” Following organizational changes within NOAA, the definition is updated to refer to the “Director of the Office of National

Marine Sanctuaries or designee” unless otherwise specified. The term “Director” is reflected in revised section 922.11.

f) Exclusive Economic Zone

The definition of “exclusive economic zone” includes a direct reference to Proclamation 5030, dated March 10, 1983, which establishes the exclusive economic zone. The term “Exclusive Economic Zone” is reflected in revised section 922.11.

g) Fish

The Florida Keys NMS regulations site-specific definition of “fish” is being adopted in 922.11 because that definition is consistent with the definition of “fish” contained in the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). NOAA also amends the statutory reference to point to the specific section of the MSFCMA where the term appears (16 U.S.C. 1802(12)). The term “fish” is reflected in revised section 922.11.

h) Indian tribe

NOAA moves the term “Indian tribe” found in the Olympic Coast NMS and Thunder Bay NMS regulations to the general regulations, and mirrors the definition provided in Executive Order 13175. Updating the definition of “Indian tribe” in the general regulations does not result in any change from a management perspective with regard to any existing sanctuary.

i) National Marine Sanctuary or Sanctuary

The definition of “national marine sanctuary or sanctuary” clarifies that the area of the marine environment of special national significance can be designated by NOAA or Congress.

j) Regional Fishery Management Council

In the definition of “Regional Fishery Management Council,” NOAA updates the legal citation to “section 302 of the Magnuson Fishery Conservation and

Management Act.” In 2006, this Act was reauthorized and renamed, “the Magnuson-Stevens Fishery Conservation and Management Act. The term “Regional Fishery Management Council” is reflected in revised section 922.11.

k) Sanctuary quality

NOAA updates the definition of “sanctuary quality” by adding “national marine” before “sanctuary.” The revised definition is reflected in section 922.11.

l) Vessel

NOAA modifies the definition of “vessel” by adding a non-exhaustive list of examples at the end of the sentence. NOAA also eliminates a redundant phrase “capable of being used as a means of transportation in or on the waters of a Sanctuary” included in the list of examples for the term “vessel.” The purpose of the change is to provide law enforcement with guidance regarding the types of watercraft that are considered “vessels.” The revised definition is reflected in revised section 922.11.

6. Consolidate definition

a) Deserting

NOAA moves the term “deserting” from the Monterey Bay NMS and Greater Farallones NMS regulations to the new definition section at 922.11, and amends it to include the following descriptors, “wrecked, junked, or in a substantially dismantled condition.” These descriptors are intended to provide guidance to law enforcement in applying the regulations and to assist the public in better understanding the regulations. The term is currently used only in the regulatory prohibitions for these two sites. While adding the descriptors “wrecked, junked, or in a substantially dismantled condition” could be interpreted to expand the universe of activities that constitute deserting a vessel, NOAA’s intent is to provide additional examples without expanding the underlying meaning. NOAA made only grammatical changes between the proposed rule and this rule

(*i.e.*, a comma was changed to semicolon). The revised definition is reflected in revised section 922.11.

D. Permit categories and review procedures

With this rule, NOAA eliminates the existing subpart D (Management Plan Development and Implementation) and replaces it with a new “Subpart D—National Marine Sanctuary Permitting.” ONMS permit review criteria and procedures were located in several different sections of the regulations: 922.48 National Marine Sanctuary permits— application procedures and issuance criteria; 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity; 922.50 Appeals of administrative action; and in subparts F through T in site-specific regulations. The rule consolidates most permitting regulations into a single subpart, and updates and clarifies ONMS permitting authority. NOAA makes several clarifications and technical revisions to the general sanctuary permitting procedures and criteria. In this section, NOAA also describes the details of the government-to-government consultation with the Washington Coast treaty tribes on the changes to the Olympic Coast NMS permit regulations.

1. Clarifications and technical revisions

- Section 922.10 provides the Director with authority to certify and regulate, but not terminate, the existence of any valid lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of sanctuary designation. This rule revises section 922.10 to clarify that certification requirements are related to the effective date of final regulations for a designation or revised terms of designation. This is a technical amendment made to ensure that the terms used in the sanctuary regulations are consistent. NOAA clarifies that certification criteria and procedures apply to new designations, and also to changes to terms of designation, which include both newly regulated activities throughout a sanctuary

or to regulations in newly expanded areas of an existing sanctuary. Certification criteria and procedures do not apply to previously regulated activities in pre-expansion areas.

- NOAA clarifies that in addition to subpart D, site-specific subparts may also include applicable permit categories, review criteria, or other requirements.
- NOAA makes a technical revision to remove “secondary” from types of adverse impacts NOAA considers in its permit review criteria. The revision more closely aligns with National Environmental Policy Act (NEPA) terminology and retains consideration of indirect and cumulative effects of permitted activities.
- NOAA clarifies that a permit applicant’s proposed methods should “avoid, minimize, or otherwise mitigate adverse effects as much as possible.”
- NOAA makes a technical revision clarifying that the Director may make specific agreements with applicants for assessing and collecting special use permit (SUP) fees.
- NOAA clarifies that permit applications may be submitted by electronic means (as opposed to just by email) in addition to submission by mail. This clarification is intended to facilitate NOAA’s plans to move forward with a web-based electronic application submission process in the future.
- NOAA clarifies that the Director may authorize a person to conduct an activity prohibited by subparts L through P, subpart R, and subpart S, if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after the effective date of sanctuary designation or expansion. This form of approval, known as an “authorization,” is and will continue to be available in seven sanctuaries: Flower Garden Banks, Monterey Bay, Stellwagen Bank, Olympic Coast, Florida Keys, Thunder Bay, and Mallows Bay-Potomac River.

- NOAA makes a technical revision to eliminate the term “renewal” from discussion of permit or authorization amendments. Permit or authorization amendments include requests for time extensions.

2. General permit categories

ONMS has four primary ways by which it may allow otherwise prohibited activities in existing sanctuaries: general permits, special use permits, certifications, and authorizations. Some sanctuaries (*e.g.*, Thunder Bay NMS and Florida Keys NMS) also have site-specific permit categories described in their relevant subpart. General permits are divided into several categories that correspond with the primary purpose of the proposed activity. Most site-specific sanctuary regulations have at least three categories of general permits: (1) management; (2) education; and, (3) research. NOAA consolidates these general permit categories into one section (922.30) and provides a single description of each permit category. Consolidating permit categories into subpart D does not preclude NOAA from creating or amending permit categories that only apply to a particular sanctuary.

Some sanctuaries also have general permit categories for other types of activities, such as salvage or recovery operations (associated with an air or marine casualty); restoration of natural habitats, populations, or ecological processes; furthering the natural or historical resource value of a sanctuary; and response to the imminent risk of a sanctuary resource injury. Following consolidation of the general permit categories, these activities will be considered under a permit category determined appropriate for the proposed action (*i.e.*, management, education, or research) and are not addressed as separate general permit categories.

In addition, a few sanctuaries have site-specific categories, procedures, and criteria for permit issuance that are unique to that sanctuary. These site-specific permit categories will continue to only apply to the specific sanctuary. However, three

site-specific general permit categories are now moved to the general permit list at 922.30, including:

- Monterey Bay NMS: jade removal;
- Olympic Coast NMS: tribal self-determination; and,
- Florida Keys NMS: activity furthers sanctuary purposes to the extent compatible with the primary objective of resource protection.

NOAA has become aware that certain conditions of the Monterey Bay NMS jade removal permit category previously codified at paragraphs 922.133(b)(6) and 922.133(d) were inadvertently left out of the notice of proposed rulemaking. The language of the jade removal permit category in the proposed rule did not capture the phrase “without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools,” which restricts the methods of jade removal in paragraph 922.133(b)(6). In addition, paragraph 922.133(d) states that “preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes.” NOAA has historically provided an exemption for limited, small-scale collection of jade in Monterey Bay NMS (63 FR 15083, March 30, 1998). NOAA did not intend to make substantive changes to the existing regulations currently codified at 15 CFR 922.133(b)(5) and (d), and there were no comments on the proposed rule addressing these jade removal provisions, or any other indication among stakeholders that these provisions should be substantively changed. Therefore, NOAA is correcting an inadvertent omission to ensure that the jade removal can continue under the general permit category at section 922.30(b)(4) in a manner that is consistent with historical practice in existence since 1998.

As noted above, the Florida Keys NMS released a Draft Environmental Impact Statement (referred to as the “Restoration Blueprint”) in August 2019 as part of an ongoing process to propose changes to the Florida Keys NMS site-specific regulations

(84 FR 45728, August 30, 2019). While NOAA is including in subpart D the Florida Keys NMS site-specific general permit category listed above, Florida Keys NMS has additional site-specific permit categories that are not changed by this rule and will remain at 922.166 and 922.167. However, the Florida Keys NMS regulations and permit categories may be revised in the future through a separate rulemaking as part of the ongoing Restoration Blueprint process.

3. Permit review criteria

NOAA consolidates permit review criteria into subpart D to improve consistency and clarity. The list of permit review factors or criteria considered by the Director was not consistent across the sanctuary site-specific regulations, nor was the regulatory text for the factors or criteria consistent. The sanctuary site-specific regulations also varied on whether the factors or criteria were affirmative findings that shall be met or whether they were simply considerations in making permit decisions. To achieve greater consistency, NOAA establishes a single list of nine review criteria and publishes it in subpart D. Eight criteria are applicable to all sanctuaries, while one is unique to Olympic Coast NMS (the activity as proposed shall not adversely affect Washington Coast treaty tribes). NOAA also eliminates site-specific impact thresholds for permit issuance in favor of making the review criteria affirmative findings. The Director must still determine whether any additional site-specific review procedures or criteria were met prior to issuing a permit. For example, for Thunder Bay NMS, the permit procedures and review criteria in subpart R, section 922.195, will continue to apply. Likewise, the Florida Keys NMS site-specific permit procedures and review criteria in subpart P, sections 922.166 (b), (c), (d), (f) and (i) through (m) and 922.167 will continue to apply. Since NOAA is considering comprehensive changes to the Florida Keys NMS site-specific regulations, these site-specific permit procedures and review

criteria may be revised in the future through a separate rulemaking as part of the ongoing Restoration Blueprint process.

4. Appeals

NOAA revises the appeal procedures and re-codifies the regulations into a new section 922.37. The regulations provide any applicant or holder of a sanctuary permit, special use permit, certification, or authorization with an opportunity to submit a written appeal to the Assistant Administrator for Ocean Services and Coastal Zone Management challenging the denial, conditioning, amendment, suspension or revocation of a general permit, special use permit, or authorization; or a certification.

In this rule, NOAA makes the administrative appeal process consistent across the National Marine Sanctuary System by restricting the potential appellants to applicants for and holders of sanctuary permits, special use permits, certifications, or authorizations; and by removing the requirement for the Assistant Administrator to hold hearings for appeals of permit decisions for Monitor NMS. NOAA also makes minor, non-substantive edits to improve readability and understanding. NOAA did not receive any public comments on the proposed changes that make the appeal process consistent across the System.

The previous regulations provided “any interested party” with an opportunity to appeal sanctuary decisions issued by the Director in six sanctuaries (Monitor NMS, Channel Islands NMS, Greater Farallones NMS, Gray’s Reef, NMS of American Samoa, or Cordell Bank NMS). These interested party appeals are called “third party appeals.” A review of the regulatory history shows that the third party appeal provisions appear to have been carried over from the initial regulations implementing the designation of several of sites, including Channel Islands NMS (45 FR 65205, October 2, 1980), Greater Farallones NMS (46 FR 7941, January 26, 1981), Gray’s Reef (46 FR 7946, January 26, 1981), NMS of American Samoa (51 FR 15883, April 29, 1986), and

Cordell Bank NMS (54 FR 22425, May 24, 1989). However, the regulatory history of each site is silent as to this provision and provides no discernable reasons why NOAA supplied interested parties with opportunities to appeal sanctuary permit decisions in these sites and not others (78 FR 6005, January 26, 2013).

Sanctuary administrative appeals are commonly brought by applicants for or holders of sanctuary permits, special use permits, certifications, or authorizations (78 FR 6005, January 26, 2013). Only two third party appeals have been filed by interested parties. Both third party appeals were filed in 2014, involved the same appellant (a non-profit organization), and involved challenges to sanctuary permits issued to two separate recreational companies operating in the Greater Farallones NMS. The first third party appeal was decided against the appellant; and the second third party appeal was voluntarily withdrawn by the appellant. In light of the very limited number of times the third party appeal option has been invoked, and given the lack of discernible rationale for affording the opportunity for third party appeals in some sites and not others, the sanctuary appeal procedures are being amended to facilitate consistency by restricting the pool of potential appellants to applicants for, and holders of, sanctuary permits, special use permits, certifications, or authorizations. Interested third parties may provide input to the permit process through other mechanisms, including public review and comment of associated environmental analyses as part of the NEPA process or other statutory processes, as applicable.

As explained in the proposed rule, only the Monitor NMS regulations required the Assistant Administrator to hold informal hearings during administrative appeals. Other sanctuary regulations provided the Assistant Administrator with discretion on whether to hold an informal hearing (78 FR 6005). NOAA removes the hearing requirement for Monitor NMS and makes the appeal procedures for Monitor NMS consistent with that of all the other sanctuary sites.

5. Special use permits

In this rule, NOAA adds two new sections for special use permits and associated fees. NMSA section 310 provides the Secretary of Commerce (Secretary) with authority to issue special use permits (SUPs) (16 U.S.C. 1441). The Secretary has delegated authority to the ONMS Director to issue SUPs that authorize specific activities in a national marine sanctuary if such SUPs are necessary (1) to establish conditions of access to and use of any sanctuary resource, or (2) to promote public use and understanding of a sanctuary resource. The NMSA also provides ONMS with authority to assess and collect SUP fees. ONMS may collect fees to recover administrative costs, the cost of implementing the permit, and the fair market value of the use of sanctuary resources. The new special use permit fee regulations are set forth in a new section 922.35.

ONMS publishes in the *Federal Register* all categories of activities that may qualify for a SUP (*see e.g.*, 71 FR 4898, January 30, 2006; 78 FR 25957, May 3, 2013; 82 FR 42298, September 7, 2017). A few SUP categories are only applicable at specific sites. For example, the SUP category for recreational diving near the USS *Monitor* applies only in the Monitor NMS and the SUP category for the continued presence of a pipeline transporting seawater to or from a desalination facility applies only in Monterey Bay NMS. Although all sanctuaries currently possess the authority to issue SUPs for certain activities as identified in the published SUP categories, the Florida Keys NMS is the only site that has site-specific implementing SUP regulations (15 CFR 922.166(d)). In order to avoid substantive changes to the Florida Keys NMS-specific regulations pertaining to SUPs, 15 CFR 922.166(d) will remain unchanged by this rule. Any proposed changes to FKNMS SUP regulations will be addressed through the public review process for the Restoration Blueprint DEIS and the associated rulemaking.

6. Application requirements and amendment procedures

Through this rule, NOAA clarifies permit application requirements and procedures and keeps the requirements themselves largely unchanged (78 FR 6005, January 26, 2013). The changes clarify that the Director may refuse to further consider an incomplete application. Applications are deemed incomplete if an applicant fails to submit required or requested information, pay outstanding penalties, or comply with any permit previously issued to the applicant. In addition, the language in new section 922.34 governing permit amendments has been revised to clarify that NOAA does not issue “renewal” permits, but has a longstanding practice of “amending” the expiration dates of existing permits provided the permit has not expired.

7. Authorizations

In this rule, NOAA moves the regulations regarding authorizations from section 922.49 to a new section 922.36. The regulations provide the Director with authority to allow an otherwise prohibited activity “if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization.” An authorization is designed to streamline regulatory requirements by reducing the need for multiple permits (78 FR 6005, January 26, 2013). NOAA also finalizes the requirement that the Director consider the permit review criteria in making decisions on authorizations.

8. Consultation with Washington Coast treaty tribes on permit regulations

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with the tribal representatives from the Makah, Hoh, and Quileute Indian Tribes and the Quinault Indian Nation of the Olympic Coast Intergovernmental Policy Council (IPC). During the consultation, NOAA advised the IPC tribal representatives that this action would include non-substantive, technical changes to the existing permit regulations. In response to comments from the Makah Tribe, NOAA

is including preamble text to clarify that the relocation of the tribal self-determination provision does not change the intent or application of this provision.

In this rule, NOAA adds a defined term “Washington Coast treaty tribe,” moves the tribal self-determination permit category to the national permitting regulations, modifies a permit review criterion to require that permitted activities shall not have an adverse effect on Washington Coast treaty tribes, and adds the consideration of all permit review criteria (including the effect of the activity on tribes) to the permit procedures in subpart D.

As noted above, NOAA has added the term “Washington Coast treaty tribe” to the general definitions in section 922.11. The term was suggested as a result of consultation during the Olympic Coast NMS management plan review process. The new definition specifically refers to any of the four tribes currently identified in the existing Olympic Coast NMS regulations and is defined as “the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.”

For Olympic Coast NMS specifically, NOAA retains the permit category for activities that further tribal self-determination. NOAA moves without change the tribal self-determination permit category to the new permitting section under subpart D. The permit category continues to read: “promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of a tribal member.” As previously stated, the relocation of this permit category does not change the intent or application of this provision.

NOAA eliminates the Olympic Coast NMS site-specific impact threshold that permitted activities must not “substantially injure” sanctuary resources and qualities. The impact threshold is replaced by nine (9) affirmative findings as discussed earlier in the preamble to this rule. NOAA finds that this impact threshold is adequately captured

in the findings that the activity must be (1) conducted in a manner compatible with the primary objective of resource protection, (4) the end value to the goals and objectives of the sanctuary outweighs potential adverse impacts, and (9) the activity does not adversely affect Washington Coast treaty tribes. The permit review criteria now require the Director to make affirmative findings, including that permitted activities would not adversely affect Washington Coast treaty tribes.

NOAA believes the changes to the permit review requirements increase consideration of tribal interests. With this rule, the Director must consider all of the permit review criteria when evaluating authorization requests. This includes understanding whether an activity adversely affects Washington Coast treaty tribes. The previous regulations did not explicitly require the Director to consider tribal interests when issuing permits. Therefore, this regulatory action should further increase deliberate consideration of and adverse effects of permit decisions on tribal interests.

Since the proposed rule published in the *Federal Register*, Olympic Coast NMS and the Makah Tribe also engaged in government-to-government consultation on tribal involvement in the consideration of Olympic Coast NMS permit applications and jointly developed a “Protocol for Permit Consultation” that specifies the procedures by which consultation and coordinated communication occurs between the Makah Tribe and the Olympic Coast NMS staff. Sanctuary staff and tribal representatives meet periodically to engage in permit consultations on ONMS permit applications, and the results of which are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented it in two recent sanctuary consultations. Olympic Coast NMS regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest. The language that NOAA adopts in this

rule has been vetted through public review and government-to-government consultation with the tribes.

IV. Responses to Comments

NOAA solicited public comments on the proposed rule, seeking to determine whether the proposed changes effectively streamlined or otherwise improved the regulations. NOAA also invited commenters to provide suggestions on how to make the regulations easier to understand. NOAA received written comments from 28 individuals or entities on the proposed rule and grouped them into 46 categories below. NOAA's response follows each comment.

GENERAL

1. Comment: Commenters commended NOAA's efforts to streamline the regulations to create consistency across the national marine sanctuary general regulations and site-specific regulations. They recognized it was complex work, in that the streamlining covered a wide range of regulations, including but not limited to, regulatory consolidation, elimination of regulations, amending regulatory procedures, and changes to regulatory definitions. In addition, commenters supported efforts to harmonize and consolidate definitions with broad applicability for the National Marine Sanctuary System. Commenters noted that definitions have important implications for sanctuary regulations and are key factors in determining access, restricted use, and user burdens.

Response: NOAA agrees with the comment.

NEPA ANALYSIS

2. Comment: Commenters recommended that NOAA prepare and release for further public comment an environmental assessment that analyzes the proposed regulatory changes and their effect on the human environment. Commenters stated that a proper analysis would allow the public to better understand the purpose and need for the proposed changes as well as the potential impacts.

Response: NOAA determined that because this rule includes only technical and administrative changes to regulatory text it meets the definition in Appendix E of the NOAA NEPA Companion Manual under categorical exclusion reference number G7 “Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.” In considering the list of extraordinary circumstances, NOAA determined that none would be triggered by this rule. Therefore, NOAA determined that this rule would not result in significant effects to the human environment and is categorically excluded from the need to prepare an environmental assessment (EA).

EXECUTIVE ORDER 13563

3. Comment: Commenters support the review per the direction of Executive Order (E.O.) 13563 “Improving Regulation and Regulatory Review.” However, commenters also noted that section 3 of E.O. 13563 advises against redundant regulations and requires agencies to attempt to promote coordination, simplification, and harmonization across regulatory regimes. Commenters questioned whether ONMS conducted such a review, or if it only looked at its own regulations. The commenters suggested that ONMS consider potential regulatory redundancies and management duplication within sanctuaries and with other agencies with statutory authority over marine resources.

Response: ONMS consulted with other federal regulatory agencies, such as the NPS and NOAA’s National Marine Fisheries Service (NMFS), with which ONMS frequently cooperates and shares related jurisdiction. ONMS also used the draft proposed regulations to identify whether there were any other additional redundancies that could be addressed. NOAA is committed to conducting periodic evaluations of individual sites and

management plan reviews consistent with NMSA section 304(e) to revise the regulations and management plans as necessary to fulfill statutory mandates. The purpose and intent of E.O. 13563 is also considered as part of the management plan review process in each sanctuary.

CONSOLIDATION OF SUBPARTS

4. Comment: NOAA should not eliminate existing section 922.21, or the entirety of subpart C (Designation of National Marine Sanctuaries). Commenters contend that one of the purposes of regulations is to implement the provisions and requirements contained in Congressional statutes that are not only applicable to citizens, but to federal agencies as well. Commenters stated the regulations must maintain reference to the sanctuary designation requirements. Commenters also stated that the public generally does not read Congressional acts, so maintaining a reference to the sanctuary designation standards set forth in section 303 of the NMSA within the Code of Federal Regulations provides the public with a means to evaluate NOAA's transparency and compliance with the NMSA in future sanctuary actions.

Response: This comment is no longer relevant, and has been overtaken by intervening agency action. On June 13, 2014, NOAA eliminated and reserved section 922.21 through a separate rulemaking that established the sanctuary nomination process (SNP) (79 FR 33851, June 13, 2014). The 2014 SNP has been incorporated in this rule.

5. Comment: NOAA should maintain section 922.30(b) of subpart D pertaining to development and implementation of site-specific contingency and emergency-response plans designed to protect sanctuary resources, including alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

Response: NOAA disagrees with this comment, and declines to retain section 922.30. The previous section 922.30 was vague and provided no direct

information to the public concerning sanctuary-related emergency response plans. NOAA maintains that under section 304(a)(2)(C) of the NMSA it retains the authority and ability to develop such plans as needed and does not require regulations to direct the development of specific contingency and emergency-response plans. Therefore, NOAA has decided to remove the previous section 922.30 because it was duplicative of the statutory requirements.

SUBMERGED LANDS

6. Comment: Commenters noted that the term “submerged lands” carries a legal definition under the Submerged Lands Act, so NOAA should describe the impact of moving away from the term “seabed” and using “submerged lands” in its place. They stated that the public would benefit from more description with regard to States’ rights and ownership of submerged lands. Another commenter stated that in Hawaii, submerged lands are considered ceded lands, which are, among other things, held in trust for the betterment of Native Hawaiians. Another commenter stated that NOAA appeared pre-decisional in that four sites (Flower Garden Banks NMS, Stellwagen Bank NMS, Hawaiian Islands Humpback Whale NMS, and Florida Keys NMS) would likely move towards a submerged lands definition.

Response: NOAA has consistently interpreted its authority under the NMSA as extending to submerged lands, and amendments to the NMSA in 1984 (Pub. L. 98–498) clarified that submerged lands may be designated by the Secretary of Commerce as part of a national marine sanctuary (16 U.S.C. 1432(3)). Therefore, there is no substantive change from moving away from the term “seabed.”

NOAA updates references in certain site-specific regulations from “seabed” to “submerged lands” in order to align the regulations with the terms of designation for those particular sites that now use the term “submerged lands” (Channel Islands NMS, Greater Farallones NMS, Gray’s Reef NMS, Cordell Bank NMS, and

Monterey Bay NMS). NOAA has decided not to add “or submerged lands” terminology to the site regulations for the following four sanctuaries - Flower Garden Banks NMS, Stellwagen Bank NMS, Olympic Coast NMS, and Florida Keys NMS - because the terms of designation for these sanctuaries use the term “seabed.” Updating the term “seabed” to “submerged lands” for the sites that use “submerged lands” in their terms of designation is not intended to result in any legal or substantive change to the regulations.

A discussion of State’s rights in regard to submerged lands is beyond the scope of this rulemaking. However, the State of Hawaii and Native Hawaiians play an important role in the co-management of Hawaiian Islands Humpback Whale NMS. The sanctuary is co-managed through an agreement with the State of Hawaii and the sanctuary advisory council includes representation of Native Hawaiian interests. This coordination helps to ensure the views and concerns of Native Hawaiians are considered in the management of sanctuaries that overlap state submerged lands.

SITE EVALUATION LIST (SEL)

7. Comment: There was broad general support from the public for the proposal to remove the SEL requirement from section 922.10. Support was mainly from organizations and individuals who viewed the SEL requirement as an impediment to the potential nomination of noteworthy sites.

Response: NOAA appreciates the support of the general public and organized groups that might wish to submit nominations to consider new sites for designation as national marine sanctuaries. In 1995, NOAA deactivated the SEL and no new areas could be added to the list for sanctuary consideration. Commenters supported the proposal to remove the SEL regulations because it would remove a barrier for potential nomination of noteworthy sites. Since the publication of the proposal to remove the SEL requirement, NOAA, in a subsequent action established the sanctuary nomination process (SNP) regulations in subpart B and removed the SEL regulatory

language at that time (79 FR 33851, June 13, 2014). As such, the SEL requirement has already been removed from the Part 922 regulations.

8. Comment: A few commenters expressed concerns about amending the regulations for the SEL. They stated that there were no specific details as to how the additional method for identifying and nominating sites would work, what programmatic objectives NOAA would use to evaluate them, and urged NOAA to follow sections 303 and 304 of the NMSA for interagency review. Other commenters expressed concerns over agency resources available to identify and add new sanctuaries to the system.

Response: As noted above, this comment is no longer relevant, and has been overtaken by intervening agency action. In June 2014, NOAA eliminated the SEL, and established the SNP, a community-driven nomination process for identifying and submitting to NOAA marine and Great Lakes sites for consideration as national marine sanctuaries. The SNP has been incorporated into this final rule, and is re-codified in new sections 922.12 and 922.13 without any changes to the existing language.

FISHING REGULATIONS

9. Comment: Some commenters supported providing additional time to the RFMCs to develop draft fishing regulations, from the proposed 120 days to 180 days. Other commenters suggested that 180 days may still not be long enough to develop draft fishing regulations, especially considering the requirements of the MSFCMA, and if the National Environmental Policy Act requirements are to be completed prior to final Council action as encouraged by a National Marine Fisheries Service Policy Directive (February 2013). Commenters suggested at least one year or more as a more appropriate time frame.

Response: NOAA appreciates the administrative constraints of the RFMCs and attempted to relieve some of the burden by extending the timeline for developing draft fishing regulations. NOAA selected 180 days because typically two

Council meetings can occur within this time frame, which allows the issue to be introduced at one meeting and a decision to be made at a second meeting. NOAA seeks to balance efficiency of its own rulemaking and environmental compliance processes with allowing sufficient time for the Councils to deliberate and develop draft fishing regulations, if they so choose. Therefore, no changes were made based on this comment.

10. Comment: Other commenters reiterated that fish and continental shelf fishery resources under the authority of the Secretary of Commerce should be managed pursuant to the MSA, and the RFMCs should prepare fishing regulations within a sanctuary in accordance with sections 302 and 304 of the MSA. They believe that under the RFMC process, fishery resources are managed consistently throughout their range and with the best scientific information available. Commenters stated that sanctuaries have neither the scientific expertise nor transparent and inclusive public process to address fishery management issues. In addition, the MSA contains specific National Standards, guidelines, scientific and economic considerations, and clear requirements for public input that include but extend beyond NEPA considerations.

Response: ONMS has not proposed any fishing regulations. The plain language of NMSA section 304(a)(5) provides clear guidance on the process for developing fishing regulations. The purpose of this action is merely to establish a clear schedule for the RFMCs to develop draft fishing regulations applicable in national marine sanctuaries.

DEFINITIONS

SYSTEM-WIDE APPLICATION

11. Comment: NOAA should not establish definitions that apply nationwide. Commenters stated that sanctuaries by design are place-based and reflect local management objectives. They argue it is unclear what purpose nation-wide definitions serve for place-based sanctuaries. If anything, this may limit individual sanctuaries, and

the local constituents and user groups they serve, from establishing local definitions that reflect the socio-cultural characteristics of a particular place or region.

Response: NOAA appreciates the commenters' concerns, but disagrees with the suggested approach. NOAA's decision to adopt general definitions is dependent on whether the term at issue applies across the System (*e.g.* "effective date" is a general term that applies to all sanctuaries). Whenever a term has limited application, NOAA has chosen to retain the site-specific definition, which only applies to the corresponding site and has no general, system-wide applicability (*e.g.* "No activity zone" in Flower Garden Banks NMS, and "Davidson Seamount Management Zone" in Monterey Bay NMS).

ADOPTING OTHER STATUTORY DEFINITIONS

12. Comment: Commenters were concerned that by adopting the definitions and, thereby, standards of several other statutes, NOAA may increase the overlap of regulatory programs. Commenters were concerned that this creates the potential for duplicative and conflicting regulatory interpretations and outcomes, which increases litigation risk for the Department of Commerce, and for action proponent agencies. ONMS should seek to develop processes that complement, rather than overlap existing regulatory programs.

Response: NOAA disagrees and believes that the proposed approach serves to provide certainty and remove the potential for conflicting regulatory requirements. In this rulemaking, NOAA adopts the definitions of "take" from other relevant statutes. Through this approach, if those referenced authorities change over time - either through an agency changing its interpretation or Congressional updates - NOAA would not have to make corresponding changes to the sanctuary regulations and consistency across the statutory regimes will be maintained. NOAA believes this increases consistency and efficiency for both the federal government and the regulated community. By referencing the other statutes explicitly, NOAA eliminates the potential

for conflicting regulatory interpretations. Doing so also provides law enforcement agencies notice of what laws apply all in one place. NOAA believes this provides an important level of certainty to law enforcement that is consistent with the NMSA goal to provide for comprehensive and coordinated conservation and management of sanctuaries (16 U.S.C. 1431(b)(2)).

13. Comment: Certain resources that may exist within sanctuary boundaries are already covered by the ESA, MMPA, and MBTA, and are not in need of protection under the NMSA via clauses (1), (2), and (3) of the proposed definition of “take or taking.” Commenters stated that ONMS should consider focusing protection resources on those areas not already protected through other regulatory programs.

Response: NOAA already incorporates the ESA, MMPA, and MBTA in its general regulations and site-specific regulations. Additionally, there may be circumstances where pursuing a “take or taking” under the ESA, MMPA, or MBTA could generate greater litigation risk or jeopardize adequate redress. ONMS believes that the concurrent authority to pursue violations under the NMSA provides important flexibility for considered judgment and adequate assurance that NOAA is able to sufficiently deter the illegal taking of sanctuary resources. Moreover, strengthening protections over already protected resources does not preclude NOAA from augmenting safeguards for other resources not granted similar protections under other statutes.

14. Comment: One commenter gave the following example: “Adoption of other statutory definitions creates a situation where NMFS could be required to formally consult with the ONMS in permitting or regulatory actions such as when issuing new regulations for resources protected under the ESA and MMPA.” The commenter stated that such an outcome appears to be contrary to the NMSA section 301(b)(2) which calls for “coordinated conservation and management of [marine sanctuaries], and

activities affecting them, in a manner which complements existing regulatory authorities.”

Response: NOAA does not believe the incorporation of other definitions is duplicative or conflicting. NOAA currently cross references the ESA, MMPA, MBTA, and other statutes in the existing sanctuary regulations. NOAA believes that efficiency is increased by adopting other statutory actions, and achieves the directive under NMSA section 301(b)(2). Incorporation of other statutory definitions of “take” is unrelated to other federal agencies duties to consult with ONMS under NMSA section 304(d). NMSA section 304(d) requires any federal agency (inclusive of other offices in NOAA) to consult with ONMS for actions that are likely to injure sanctuary resources. The regulatory definition of “injure” does not adopt by reference the other statutory definitions of “take.”

15. Comment: In general, some commenters were concerned that adoption of terms ran a risk of these terms being used out of their original context and reasoning. For example, the commenters stated that apparently simple alterations to the definitions of “injure,” “take or taking,” “harmful matter,” and “seabird” change standards and create cascading effects and considerable expansion of responsibilities. Commenters expressed concern that expanded responsibilities might lead to litigation against ONMS and proponent agencies.

Response: As previously mentioned, in the existing sanctuary regulations, NOAA routinely cross references definitions as used in other statutes (*see* the existing definition of “take or taking” as set forth in 922.3). NOAA believes that referencing other statutes provides consistent terminology that benefits the public understanding and ability to comply with various Federal laws and regulations that overlap in one location. In addition, ONMS routinely works with partners on statutory and regulatory enforcement. These partners include the Fish and Wildlife Service (FWS), NMFS, the U.S. Coast

Guard, the NPS, and state and local enforcement agencies. These partners have to reference different variations of definitions, and to correctly distinguish between them when issuing a citation. NOAA believes that adoption of uniform standards will help the many enforcement officers that use these definitions to more clearly and consistently identify violations, and should lead to greater overall protection of the resources under NOAA's authority.

As such, NOAA does not believe that the changes to definitions finalized in this action expand NOAA's authority or create additional administrative or enforcement burden. However, in response to these concerns, NOAA has modified the definition of "injure or injury" to remove the phrase "or impairment of a sanctuary resource service." NOAA has modified the definition of "take or taking" to ensure the existing scope of these definitions is not unintentionally expanded.

CONVENTIONAL HOOK AND LINE GEAR

16. Comment: The definition of "conventional hook and line gear" is too broad and appears to limit traditional fishing methods. For example, deep-water bottom fish hook and line gear includes branch lines with baited hooks and is a traditional fishing gear in Hawaii and other U.S. Pacific Islands, and in other areas fishers may use hook and line gear that include branch lines and baited hooks. The proposed definition does not include these methods, and also does not include vertical handline gear, vertical longline gear, shortlines, among others.

Response: NOAA continues to believe that longline and shortline gear is not "conventional hook and line gear" as the term is used in the existing site-specific regulations for the Flower Garden Banks NMS, section 922.122. Additionally, none of the fishing activities in the Pacific Region mentioned by the commenter would be affected by the definition of this term because it only appears in the Flower Garden Banks NMS prohibition and does not appear in any other site-specific regulations. If an

activity is traditional fishing, then it is already included under the “traditional fishing” regulation, which is discussed further in the next comment.

TRADITIONAL FISHING

17. Comment: NOAA should not consolidate the term “traditional fishing” into a single definition. The commenters stated that under the proposed definition, fishing conducted by Native Americans in sanctuaries on the West Coast, and by indigenous peoples in the American Samoa and Hawaiian Island Humpback Whale sanctuaries would not meet the definition of traditional fishing as many practices, some of which are only now being revitalized, are not identified in original sanctuary documents. Commenters suggested this was insensitive to indigenous cultures that have been fishing for thousands of years in areas that are now sanctuaries. The commenter states that furthermore, because the term is used only in the Florida Keys and Thunder Bay sanctuaries, it is not appropriate to apply this definition broadly to the entire sanctuary system.

Response: NOAA appreciates the concerns raised by the commenters. Pursuant to E.O. 13175 Consultation and Coordination with Indian Tribal Governments, in 2012, NOAA also invited Federally-recognized Indian tribes in the state of Washington (in particular, the Hoh, Makah, and Quileute Indian tribes and the Quinault Indian Nation) to engage in consultation. After reviewing consultation feedback and public comments, NOAA has decided not to consolidate the definition of “traditional fishing.” The term “traditional fishing” as referenced in three sanctuaries (Florida Keys NMS, Thunder Bay NMS, and Stellwagen Bank NMS) will remain in their respective site-specific regulatory sections.

MOTORIZED PERSONAL WATERCRAFT (MPWC)

18. Comment: Some commenters were concerned about the effort to standardize the definition of a motorized personal watercraft (MPWC). Although these

commenters generally supported the creation of a standard definition of MPWC, the commenters revealed that consolidating the definition could create undesirable outcomes under the site-specific regulations for Channel Islands, Greater Farallones, Monterey Bay, and the Florida Keys and potentially expand the number and types of vessels that could be banned or restricted from operation in the Sanctuary System. Another commenter suggested that NOAA adopt the term “personal watercraft” instead of adopting “motorized personal watercraft.”

Response: Having considered the comments provided on the proposal to consolidate the definition of MPWC and “personal watercraft,” NOAA has determined that more time is needed to gather more information, engage stakeholders and the sanctuary advisory councils, develop alternative consolidated definitions of MPWC, and thoroughly evaluate the environmental impacts associated with said consolidated definitions. Therefore, NOAA has decided not to consolidate the definitions of MPWC or “personal watercraft” at this time. As a result, the existing definitions of MPWC set forth in 15 CFR 922.71 (Channel Islands NMS), 922.81 (Greater Farallones NMS), and 922.131 (Monterey Bay NMS), and the existing definition of “personal watercraft” in 922.162 (Florida Keys NMS) remain unchanged.

INJURE or INJURY

19. Comment: The commenters expressed concern that the proposed rule would expand the definition of “injure” to include direct and indirect “impairment of a sanctuary resource service.” The commenters were also concerned that the proposed change, if approved, would encompass short and long-term adverse changes to any chemical, biological or physical attribute or viability of a sanctuary resource and would not be limited to acts that cause loss or destruction. Commenters stated that this expanded definition of “injury” has been considered and rejected by Congress in past efforts to reauthorize the NMSA, and maintained that this is a broadening of the definition rather

than a mere updating, as NOAA has indicated in the proposed rule. The commenters state that the proposal substantially enlarges the category of effects that constitute injury, and would change the type of cases or expand the pool of potential violations that are likely to be issued using this definition. Lastly, the commenters stated that while it is likely obvious to members of the public what it is to cause loss or outright destruction of a sanctuary resource, is it not clear what might constitute “indirect” injury.

Another commenter noted that the phrase “or the impairment of a sanctuary resource service” is redundant and leads to confusion. The commenter stated that if a “resource service” is a function performed by a sanctuary resource for the benefit of another sanctuary resource or the public, then impairment to that sanctuary resource’s function would already constitute an injury to the resource itself. The commenter argues that an injury to the resource itself is already covered by the existing definition.

Response: In response to comments, NOAA will update the existing definition of “injure” to include “injury ” and move the definition from 15 CFR 922.3 to 15 CFR 922.11. Additionally, NOAA is no longer including the phrase “or impairment of a sanctuary resource service” found in the proposed definition of “injury.” The updated definition will read as follows:

Injure or injury means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

NOAA acknowledges potential confusion created by the insertion of the term “impairment of a sanctuary resource service” in the first sentence of the proposed definition of “injure.” With that stated, NOAA’s proposed definition would not have expanded the definition of injury. NOAA merely attempted to clarify and codify existing statutory language and interpretation.

The term “injure” is not limited to acts that cause the loss of, or destroy. The statutory prohibition found in NMSA section 306 establishes that it is unlawful to “destroy, cause the loss of, or injure any sanctuary resource.” In adopting this language, Congress makes clear that “injure” is distinct, and not limited to, acts that “destroy” or “cause the loss of” a resource. The plain language reading of the term “injure” includes to “impair the soundness of” (<https://www.merriam-webster.com/dictionary/injure>).

The inclusion of “impairment of a sanctuary resource service” is consistent with the statutory purpose of the NMSA, which establishes a National Marine Sanctuary System to “maintain for future generations the habitat, and ecological services” of the living resources in the sanctuaries, 16 U.S.C. 1431(a)(4), and the definition of “damage,” 16 U.S.C. 1432(6), which recognizes “lost use of a sanctuary resource” as being compensable.

Additionally, the existing definition of injury codified at 15 CFR 922.3 already establishes that “injure means to change adversely, in the short and long term, a chemical, biological, or physical attribute of, or viability of. This includes, but is not limited to, to cause the loss of or destroy.” Therefore, NOAA has not broadened the definition of “injury” to encompass “short and long term adverse changes to any chemical, biological or physical attribute or viability of a sanctuary resource.” The use of the phrase “impairment of a sanctuary resource service” would have served as another example of what “to change adversely” means.

While NOAA has decided to remove this phrase “impairment to a sanctuary resource service” from the proposed definition of injury, NOAA will continue to work with agency partners and stakeholders to help them better understand the definition.

SANCTUARY RESOURCE

20. Comment: NOAA should modify the definition of “sanctuary

resource” to incorporate the phrase, “or parts or products thereof” after “any living or non-living resource of a national marine sanctuary.”

Response: ONMS agrees with this comment and has incorporated the phrase into the definition.

21. Comment: Some commenters believe that: “fishery resources” should be specifically excluded from the definition of “sanctuary resources.”

Response: NOAA maintains that fish and fisheries resources are some of the most significant resources in many sanctuaries, and as such, are appropriate for inclusion in the definition of “sanctuary resources.” In addition, inclusion of these resources as “sanctuary resources” is consistent with NMSA which contemplates fisheries regulation within the scope of NMSA regulatory authority (*see* 16 U.S.C. 1434(a)(5)).

22. Comment: Commenters were concerned that the inclusion of the seemingly innocuous phrase “any living or non-living resource of a national marine sanctuary” could have unintended consequences as animals and resources that may only pass through a sanctuary would now become a sanctuary resource. Excluding the phrase “or parts or products thereof” does not diminish or undermine protection for sanctuary resources that may be “dismembered and removed.”

Response: The phrase “any living or non-living resource of a national marine sanctuary” is contained in the NMSA under the definitions at section 302(8). Therefore, excluding this phrase from the regulatory definition would be inconsistent with the NMSA. Since dead animals are captured in the phrase “living or non-living,” NOAA includes the phrase “parts thereof” in the regulatory text. This is consistent with the approach taken by other federal agencies, such as FWS, NMFS, and NPS.

A sanctuary resource needs only to contribute to the value of a sanctuary to be considered a "sanctuary resource." Specifically, the NMSA states (16 U.S.C

1432(8)) “sanctuary resource means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary.”

Therefore, a sanctuary resource may also be transitory.

TAKE OR TAKING

23. Comment: Several commenters expressed concerns about the revision of the definition of the term “take or taking.” Commenters stated that the term “take” could have a very low threshold for what activities could cause take (*i.e.*, Level A and B harassment for incidental take pursuant to the MMPA). Commenters also stated that “take” as defined in regulations implementing the ESA and MBTA are more direct and obvious acts which “actually kills or injures wildlife” (in the case of species protected under the ESA); and “hunting, taking, capture, killing possession, sale, transportation of any... bird, or part, nest or egg” (in the case of birds protected under the MBTA). The apparent differences of definitions and applications of “take” standards concerned some commenters. Commenters stated that absent a clear indication of how NOAA’s Office of Law Enforcement would interpret an expanded definition, the proposal does not provide the public with transparent and fair warning.

Response: NOAA asserts that, by adopting these statutes by reference, the revised definition improves clarity and consistency with the ESA, MMPA, and MBTA and does not change the threshold for take. Both the ESA and MMPA apply to incidental and direct takes and include both physical injury and behavioral harassment (*see* response to comment 14). NOAA believes that adopting other statutes by reference ensures consistency should either those statutes or their implementing regulations be modified.

NOAA has determined that applying the definition to other sanctuary resources as originally proposed could be interpreted as expanding the applicable scope

of take or taking in certain site-specific sanctuary regulations. As such, NOAA has decided not to apply the “take” definition to other sanctuary resources. Accordingly, the finalized definition is limited to marine mammals, sea turtles, and birds. NOAA also added additional language to capture a previously omitted phrase to ensure that there is no substantive difference between the previous definition and the definition established in this rule. The inadvertently omitted phrase “to tag any sea turtle, marine mammal, and bird” is also included in the definition of “take”.

24. Comment: Some commenters also stated that instead of being a clarification, the proposed definition of “take or taking” would expand the scope of the regulation beyond the authority of the NMSA. They said the proposed definition goes too far because some of the actions listed in the proposed fourth provision of the new definition (*i.e.*, applying the take definition to other sanctuary resources) do not rise to the level of destruction, loss, or injury. Commenters stated that, when combined with existing site-specific regulations prohibiting “take,” the new definition would extend greater-than ESA-, MMPA-, and MBTA-level protections to resources not entitled to that level of protection under the NMSA (which prohibits destruction, loss, or injury). Some commenters expressed concern about the impact these changes would have on recreational fishing, which removes a species from a sanctuary’s waters. They questioned if fishing and fish that are released but subsequently die would be considered a take. Some commenters asserted that NOAA proposed the “take or taking” definition changes as a means of reducing human activity wherever possible. They assert this was mission-creep and protectionism that is counter to the “wise multiple use” concept promised to secure fishermen’s support for sanctuary creation.

Response: NOAA does not finalize the proposed fourth provision related to take of other sanctuary resources. Consistent with the original definition of “take or taking,” NOAA limits the applicability of the definition to “take (taking or

taken) of a marine mammal, sea turtle or bird.” NOAA also includes the provision “take also includes, but is not limited to, collection of any dead or injured marine mammal, sea turtle, or bird, or any part thereof; or restraint or detainment of any marine mammal, sea turtle, or bird, no matter how temporarily; tagging any marine mammal, sea turtle, or bird; or operating a vessel or aircraft or conduct any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.” This retains certain aspects of the original definition that were omitted from the proposed rule. While the general definition of take applies to classes of resources protected under the ESA, MMPA, or MBTA, some site-specific regulations prohibit “take” of other sanctuary resources. For other site-specific regulations that prohibit take of other living or non-living sanctuary resources beyond the classes of resources protected under the ESA, MMPA, or MBTA, the plain meaning of the term “take (taking or taken)” will continue to apply. For a discussion of the interrelationship between “take” and “injury” (*see* comment response 14).

25. Comment: One commenter also expressed concerns that two new terms “disturbance” and “molestation” were introduced in the fourth provision of the proposed definition. Commenters said these appear to describe a new legal standard that was not identified as a level or threshold of expected protection and are undefined in the proposed regulation. They stated these terms are subject to divergent interpretation, create ambiguity, and are more restrictive than even the lowest levels of protection identified in other resource protection statutes.

Response: As discussed above, NOAA removes the fourth provision from the definition of take established in this rule. The terms “disturbance” and “molestation” were already included in the original definition of “take or taking,” which states that take also includes, but is not limited to operating a vessel or aircraft or conducting “any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or

bird.” NOAA is retaining that provision in the final definition as to not substantively change the definition.

HARMFUL MATTER

26. Comment: Commenters were concerned the proposed change was overbroad and left the door open for regulating any and all substances and discharges currently regulated by the Clean Water Act (CWA) and the Clean Air Act (CAA). Commenters suggested that the term should be substantially narrowed to a discrete and discernible list of substances known to present a substantial threat to the sanctuary resources identified in the NMSA.

Response: NOAA understands the broad scope nature of the revised term, but due to the unique characteristics of each site, a single list of applicable substances is not appropriate. The intent of the clarification is mainly for prevention of harmful chemicals from entering sanctuaries, which are already prohibited in many cases. The definition of harmful matter includes those contaminants identified as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (as designated at 40 CFR 302.4). The intent of reference to the CERCLA regulatory definition of hazardous substances in the definition of harmful matter is to ensure that any subsequent updates to the CERCLA list at 40 CFR 302.4(a), or other definitional changes, are automatically included within the NMSA regulatory definition of harmful matter. NOAA is aware, and believes it appropriate, that substances and discharges currently regulated by the CWA and the CAA may also be “harmful matter” pursuant to the NMSA regulatory definition.

27. Comment: There was concern that the proposed definition of “harmful matter” would encompass the release of military expended materials within a sanctuary in the course of conducting training activities, and would substantially alter existing protections for military readiness activities. Commenters claim that the release

of military expended materials is purposeful and is not debris, should not be considered a harmful matter across all sanctuaries, and regulation of these materials should not be expanded.

Response: NOAA's changes to the definition of the term "harmful matter" are limited to technical revisions that improve readability and do not substantively affect its application in the regulations. The revised definition also would not revise any existing exemptions for military activities that are currently contained in the existing site-specific regulations.

SUBSTITUTING "BIRD" FOR "SEABIRD"

28. Comment: Commenters expressed concern that substitution of the term "bird" for "seabird" expands the statutory protection for all birds that transit through a sanctuary, under the theory that even temporary presence or transits make the birds a sanctuary resource. Commenters stated that this change would impermissibly enlarge the scope of the regulation beyond that authorized by the NMSA, which they believe only includes discrete areas of the marine environment. Commenters continued that seabirds are those adapted to life in the marine environment and routinely use sanctuary resource services for survival and arguably fit the statutory definition of a sanctuary resource. However, other migratory birds which temporarily transit through airspace over the sanctuary, are not adapted to the marine environment, or do not depend on the marine environment during their life cycle, do not fit the definition and should not be included.

Response: The NMSA focuses upon protecting sanctuary resources, and authorizes the Secretary to regulate activities – both inside and, and in some cases, outside of a sanctuary – that affect sanctuary resources within a sanctuary. This authority was clarified in 1992 with the enactment of the prohibitions found at section 306 of the Act (which was discussed in the accompanying legislative history at H.R. Rep. 102-565,

§ 7 (Jun. 15, 1992)). Based upon this authority, sanctuaries have promulgated a variety of regulations that not only regulate activities that occur in sanctuaries, but also in limited cases, regulate some activities that occur outside a sanctuary, because they may impact sanctuary resources within sanctuary boundaries (*e.g.*, discharges that are released outside of a sanctuary), or over a sanctuary (*e.g.*, overflights on the west coast).

The intent of this regulatory action is to remove inconsistencies and redundancies. In four sanctuaries (discussed in the preamble section II.C.1.e.2 above), prohibitions already regulate birds rather than limiting the class of protected animals to “seabirds.” In addition, the existing regulatory prohibitions already adopt by reference the list of protected species under the MBTA (listed at 50 CFR 10.13), which does not distinguish between a seabird and non-seabird. Therefore, NOAA continues to believe this action clarifies the term for the purposes of E.O. 13563, and NOAA has the requisite legal authority to promulgate the amended regulation.

OCEANGOING SHIP

29. Comment: Moving the definition of oceangoing ship – currently found only in existing subpart G, Channel Islands NMS – to the program-wide regulation, should reflect that prohibitions and other restrictions for oceangoing ships do not apply to Department of Defense activities (as explicitly stated in subpart G, section 922.72(b)). Balancing national security and protection of important marine resources is best done where restrictions contemplated for public vessels are tailored to each sanctuary. However, the commenter agreed that subpart G can be hard to follow or can be misconstrued, and recommended that, consistent with the effort to streamline and improve organization, if the definition was moved as proposed, that “military vessels” should be removed from the definition.

Response: NOAA has withdrawn this proposed action from this rule.

30. Comment: One commenter applauded the efforts of ONMS, but

opposed moving the definition of “oceangoing ship.” They contended that ships and vessels that: 1) never leave the Great Lakes; 2) are generally too large to exit the Great Lakes via the Welland Canal and St. Lawrence Seaway; and 3) are by law forbidden to operate on the oceans would be defined as an “oceangoing ship.” Therefore, ONMS should not move the definition of “oceangoing ship” from its current location in the regulations unless an exception is inserted in the definition as to ships operated exclusively on the Great Lakes, comparable to the Note in 33 CFR 151.05.

Response: NOAA has withdrawn this proposed action from this rule.

PERMITS

CONSOLIDATION TO SUBPART D

31. Comment: The Makah Tribe did not object to moving the tribal self-determination permit category to subpart D because there would be no operative change in the application of the provision within Olympic Coast NMS. However, the Tribe requested that NOAA further clarify that the relocation of the permit category does not change the intent or the application of this provision.

Response: NOAA’s explanation in the proposed rule preamble did attempt to explain that the tribal self-determination permit category was moved without change. In response to comments from the Makah Tribe, NOAA has provided additional clarification in the preamble to this interim final rule to confirm that the no substantive change to the tribal self-determination permit category will result from this move to subpart D.

32. Comment: The Makah believe that the Tribe should be afforded an opportunity to review any permit application for activities within or that have the potential to affect the Makah Usual and Accustomed area and consult with the Olympic Coast NMS.

Response: Olympic Coast NMS and the Makah Tribe engaged in

government-to-government consultation on this issue and jointly developed a Protocol for Permit Consultation that specifies the procedures by which consultation and coordinated communication will occur between the Makah Tribe and the Olympic Coast NMS staff. The sanctuary staff and tribal representatives meet periodically to engage in consultation on ONMS permit applications, the results of which are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented it in two recent sanctuary consultations. Olympic Coast NMS regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest.

33. Comment: The commenter indicates that the preamble for this action should clarify that the regulations do not limit the ability of sanctuaries to create site-specific permit categories. The commenter also believes that the review criteria for permits and authorizations need to be clarified.

Response: NOAA has explained in the preamble of this rule that consolidating permit categories and criteria into subpart D does not prevent NOAA from creating or amending permit categories that would only apply to a particular sanctuary.

NOAA consolidates permit review criteria into subpart D to improve consistency and clarity. The list of permit review factors or criteria considered by the Director was not consistent across the sanctuary site-specific regulations, nor was the regulatory text for the factors or criteria consistent. The sanctuary site-specific regulations also varied on whether the factors or criteria were affirmative findings that shall be met or whether they were simply considerations in making permit decisions. To achieve greater consistency, NOAA establishes a single list of nine review criteria and publishes it in subpart D. Eight criteria are applicable to all sanctuaries, while one is unique to Olympic Coast NMS (the activity as proposed shall not adversely affect

Washington Coast treaty tribes). NOAA also eliminates site-specific impact thresholds for permit issuance in favor of making the review criteria affirmative findings. The Director must still determine whether any additional site-specific review procedures or criteria were met prior to issuing a permit. The regulation on authorizations in paragraph 922.36(c)(2) establishes that the permit review criteria set forth in 922.33(a) must also be considered by the Director when making decisions on authorizations.

34. Comment: NOAA should clearly identify the process by which the ONMS Director can issue a special use permit. Specifically, NOAA should clarify what the public comment process is and whether the requirements of the National Environmental Policy Act (NEPA) are required.

Response: NMSA section 310 establishes the authority for ONMS to issue special use permits and requires the Secretary to provide appropriate public notice before identifying any category of activity subject to a special use permit. For established special use permit categories. For established special use permit categories the process for applying for special use permits and general permits are similar. Permit application and instructions can be found at <https://sanctuaries.noaa.gov/management/permits/>. Special use permits must additionally meet requirements set forth in NMSA section 310. The Director evaluates all activities that may require a permit in accordance with statutory and regulatory requirements. Permit decisions are federal actions that require compliance with NEPA and any applicable interagency or tribal consultations. Public comment is not required for the issuance of any ONMS general or special use permit. However, NOAA may choose to seek public comment as part of the NEPA process.

35. Comment: NOAA should not allow the ONMS Director the authority to provide an authorization to allow an otherwise lawful activity that includes mandatory terms and conditions. NOAA should also explain the process the ONMS Director would use to establish terms and conditions and further explain how the public is involved in

this process.

Response: This rule does not change the authority of the ONMS Director to authorize a person to conduct an activity otherwise prohibited by subparts L through P or subparts R through S, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization. The authority for the ONMS Director to establish mandatory terms and conditions for authorizations has already been established in section 922.49(a)(4). Public comment is not required for the issuance of any ONMS permit, except as may be done as part of an environmental analysis completed for the purposes of NEPA.

OTHER TOPICS

EFFECTIVE DATE OF REGULATIONS

36. Comment: The proposed rule and discussion do not explain how changes to the regulations will impact ongoing actions by federal agencies and actions proposed but not yet approved by action proponents before the effective date of these regulation changes.

Response: Because the changes that are finalized with this action are administrative and technical in nature, and because no prohibitions were proposed, NOAA does not anticipate that the changes will have any impact on existing federal agency actions. There are several ONMS regulatory actions underway and ONMS intends to harmonize those regulations with this rule.

37. Comment: NOAA should state that ongoing actions by federal agencies and those federal agency actions proposed before the effective date of these regulatory changes will not require amendment or consultation in accordance with the new regulations.

Response: NOAA is not making any substantive change to any prohibitions through this action. Therefore, NOAA does not anticipate any issues

arising from the timing of this rule and activities currently conducted or proposed by federal agencies.

COMMENTS ON TOPICS NOT AFFECTED BY THIS RULEMAKING

NOAA received several additional comments, as described below, that it does not address in this rule as the comments pertain to matters that are beyond the scope of, and are not relevant to, this rulemaking.

38. Comment: There are competing management jurisdictions between the NMSA and the MSFCMA when it comes to fishing regulations, with unnecessary duplication of bureaucracy and its related costs. The root cause of the specific problem appears in section 304 of the NMSA whereby RFMCs are afforded the opportunity to prepare draft regulations using the MSA as guidance only “to the extent that the standards are consistent and compatible with the goals and objectives” and only during the sanctuary designation process.

Response: The intent of this rule-making is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. The concerns raised by this comment, regarding the development of fishing regulations pursuant to section 304 of the NMSA, are best addressed by Congress through a separate process and are beyond the scope of this action. Therefore, no changes are being made to address the commenter's concerns.

39. Comment: All fisheries management should be vested in the RFMC process rather than in ONMS or individual sanctuaries.

Response: The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. The concerns raised by this comment suggests

changes be made to all sanctuary regulation relevant to the management of fisheries activities and are beyond the scope of this rulemaking. Therefore, no changes are being made to address the commenter's concerns.

40. Comment: One commenter wanted to know if the public could petition NOAA to eliminate or reduce the size of a sanctuary, and what process would NOAA follow in considering such a petition.

Response: Any modification to the geographic area of an existing sanctuary would be governed by section 304 of the NMSA and section 4 of the Administrative Procedure Act. No changes are being made in response to this comment.

41. Comment: NOAA should consider changes to Charters and Protocols for sanctuary advisory councils (SACs). Currently, all of the functions of the SACs (*e.g.* member appointments, agendas, communications) are controlled by sanctuary management. The greatest strength of the sanctuaries comes from community and stakeholder support, and the structure of SAC governance works against achieving that support.

Response: The comment proposes changes to SAC governing procedures. The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. Significantly changing SAC governance is outside the scope of this rulemaking. Therefore, no changes are being made to address the commenter's concerns.

42. Comment: Sanctuaries should be tasked explicitly to utilize a robust and transparent peer review process for science products, including socioeconomic evaluations, in sanctuary decision-making.

Response: ONMS makes sanctuary decisions in an open and transparent manner guided by the best scientific information and data available, employing sound

methods to ensure scientific quality, objectivity, and integrity, and utilizing – where appropriate – peer review panels to ensure sanctuary decisions are informed by independent and diverse viewpoints in accordance with the Information Quality Act (Pub. L. 106-554), the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115-435), and related-guidance issued by the Office of Management and Budget (OMB), the U.S. Department of Commerce (DOC), and NOAA. In doing so, ONMS follows OMB and NOAA policy on peer review for science products, including socioeconomic evaluations (<https://www.noaa.gov/organization/information-technology/peer-review-plans> and <https://www.noaa.gov/office-of-chief-information-officer/it-policy-oversight/information-quality>). A 2004 OMB memo describes how peer review enhances the quality and credibility of science products (https://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf). More information on the ONMS conservation science division is available on our website, <https://sanctuaries.noaa.gov/science/>. The intent of this rulemaking is to clarify existing sanctuary regulations. Adding an explicit science policy requirement to this rule would be outside its intent and scope. Therefore, no changes are being made to address the commenter's concerns.

43. Comment: NOAA should provide clarification in the regulations that permitting and authorizations do not apply to federal agency activities including Navy testing, training, or military readiness activities conducted in or around sanctuaries.

Response: NOAA believes the requested clarification is unnecessary in this rulemaking. The existing site-specific regulations adequately provide certain exemptions to the list of prohibited or otherwise regulated activities at each sanctuary site. For instance, the Department of Defense (DoD) exemptions for Channel Islands NMS are set forth at section 922.72(b), those for Greater Farallones are set forth at section 922.82(b), and those for Gray's Reef NMS are set forth at section 922.92(b). The

site-specific regulations also provide exemptions for law enforcement and any activity necessary to respond to an emergency threatening life, property, or the environment, which might be carried out by a federal agency. Exemptions of this type are unique to each specific sanctuary. Providing a general exemption for all federal agency activities would be a substantive expansion of the existing site-specific exemptions and beyond the scope of this rulemaking. Therefore, no changes are being made in this rulemaking to address the commenter's concerns.

44. Comment: Under the definitions of sanctuary resources, the culture and heritage of fishing in coastal communities alongside national marine sanctuaries should be considered for protections just as are other living resources and habitats.

Response: NOAA does not believe that changes to the definition of sanctuary resources are appropriate. Human uses are taken into consideration as part of the sanctuary designation and periodic management plan review processes performed under NMSA sections 303 and 304, and NEPA. Therefore, no changes are being made to address the commenter's concerns.

V. Classification

A. National Environmental Policy Act¹

NOAA Administrative Order (NAO) 216–6A and the Companion Manual for NAO 216-6A (<https://www.nepa.noaa.gov/docs/NOAA-NAO-216-6A-Companion-Manual-01132017.pdf>) establish NOAA's policy and procedures for compliance with

¹ In 1978, the White House Council on Environmental Quality (CEQ) issued regulations, codified at 40 C.F.R. parts 1500-1508, to implement NEPA. 43 Fed. Reg. 55,977 (Nov. 29, 1978). Most recently, the CEQ updated the NEPA regulations. 85 Fed. Reg. 43,304 (Jul. 16, 2020) (codified at 40 C.F.R. parts 1500-1508, 1515-1518). Pursuant to those updated NEPA regulations, NEPA reviews initiated prior to September 14, 2020 may be conducted using the 1978 version of the regulations. The effective date of the 2020 CEQ NEPA Regulations was September 14, 2020. This review began before January 13, 2013 and the agency has decided to proceed under the 1978 regulations.

NEPA and the associated Council on Environmental Quality's regulations. NAO 216-6A, Environmental Review Procedures, requires all proposed actions to be reviewed with respect to environmental consequences on the human environment.

In the proposed rule (78 FR 5998; January 28, 2013), NOAA stated that it was preparing a draft EA to analyze the potential environmental impacts of the proposed rulemaking and that the draft EA would be released for public comment. The analysis in the draft EA would have focused on analyzing the potential environmental impacts of the consolidated definition of MPWC. Based on public comment received on the proposed rule, NOAA decided to withdraw the proposal to consolidate the MPWC definition. As a result, NOAA determined that preparation of a draft EA was not necessary for this rule. NOAA determined that because the rule includes only technical and administrative changes to regulatory text it meets the definition in Appendix E of the NOAA NEPA Companion Manual under categorical exclusion reference number G7 "Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis." In considering the list of extraordinary circumstances, NOAA determined that none would be triggered by this final rule. Therefore, NOAA determined that this rule would not result in significant effects to the human environment and is categorically excluded from the need to prepare an EA.

B. Executive Orders 12866 and 13563

This rule has been determined to be significant within the meaning of Executive Order 12866. The rule is part of NOAA's effort to carry out the directive under Executive Order 13563 for retrospective regulatory review.

C. Executive Order 13175: Consultation and Coordination with Indian Tribal

Governments

Pursuant to Executive Order 13175, NOAA has an obligation to consult with federally-recognized tribes on actions that may have tribal implications. NOAA determined that the amendments to the Olympic Coast NMS permitting regulations in the consolidation of permit procedures and review criteria into the new subpart D, although not resulting in a substantive change to permitting requirements, could be perceived as having tribal implications because some of the regulatory text is specific to the federally-recognized tribes along the Washington Coast (Coastal Treaty Tribes). Therefore, we have determined that this regulation has tribal implications as defined in Executive Order 13175. NOAA certifies that this final rule was developed after meaningful consultation and collaboration with tribal representatives in accordance with Executive Order 13175. NOAA engaged in government-to-government consultation with tribal representatives from the Makah, Hoh and Quileute Indian Tribes and the Quinault Indian Nation of the Olympic Coast Intergovernmental Policy Council (IPC). NOAA determined that this regulatory action did not have implications for any other federally-recognized tribes at other sites.

In January 2012, NOAA initiated a dialogue with the Coastal Treaty Tribes for a potential rulemaking action that would revise and consolidate program-wide and site-specific regulations. ONMS staff presented initial items for consideration by the IPC and its members at a February 8, 2012 meeting. In May 2012, NOAA addressed initial concerns that were raised at the February meeting. At that time, NOAA provided a summary of the proposed regulatory changes, and invited the IPC members to consult if there were concerns about the general proposals. In October 2012, NOAA provided more detailed information including pre-release draft regulatory language for program-wide regulations and Olympic Coast NMS site-specific regulations that could be of interest to

the tribes. After the proposed rule was published in the *Federal Register*, NOAA forwarded the notice to the Washington Coast treaty tribes on February 15, 2013.

The Makah Tribe provided comments on the rulemaking raising three priority issues. In addition to the matter noted in the Response to Comment section of this action, the Makah Tribe reiterated its long-standing position about the role of RFMCs in fisheries management, which did not require action in this rulemaking. The Makah Tribe also expressed interest in improved tribal involvement in the consideration of Olympic Coast NMS permit applications. Since the publication of this proposed rule, Olympic Coast NMS and the Makah Tribe engaged in government-to-government consultation in the development of a joint “Protocol for Permit Consultation” that specifies the procedures by which consultation and coordinated communication will occur between the Makah Tribe and Olympic Coast NMS staff (dated April 10, 2015). The sanctuary staff and tribal representatives meet periodically to engage in permit consultations on ONMS permit applications, and the results of which are included in ONMS permit decision documents. In addition, the Makah Tribe and ONMS developed a protocol to engage in consultation as part of the NMSA section 304(d) interagency consultation process and have implemented it in two recent sanctuary consultations. Olympic Coast NMS regularly engages with the Washington Coast treaty tribes on various initiatives of mutual interest.

D. Executive Order 13132: Federalism Assessment

NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

E. Paperwork Reduction Act

This rule does not create any new information collection requirements, nor does it change existing information collection requirements approved by OMB (OMB Control

Number 0648-0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (PRA). There are no changes to the reporting burden as a result of these regulatory changes. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

F. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is that the changes are administrative in nature and generally would not alter substantive legal obligations for the regulated community.

Specifically:

- Moving current sections of the regulations to different subparts and revising text as finalized in this rule will not substantively change the effect or impact of the regulations;
- Making the technical corrections to citations and obsolete sections of the regulations in this rule will not substantively change the effect or impact of the regulations; and
- Amending and consolidating the permitting regulations from many site-specific regulations to a single subpart does not substantively change the requirements to apply for permits, nor does it change the burden on applicants who wish to apply for permits.

Therefore, these changes should not alter the current operations of small businesses because the changes are administrative and technical in nature. NOAA did revise the permit appeals regulation to limit the pool of appellants of a permit decision to

only applicants or holders of permits. To date, only two appeals have been filed by “any interested party.” NOAA did not receive any comments from the public or from any small businesses on this particular action. NOAA does not anticipate that limiting the appellant pool will adversely impact small businesses. NOAA believes the overall changes will provide consistency within the regulations across sanctuaries. Therefore, these changes should not impact the current operations of small business operators, and may improve ease of applying for permits by removing inconsistencies and confusion that might otherwise occur. Interested third parties may provide input to the permit process through other mechanisms, including public review and comment of associated environmental analyses as part of the NEPA process or other statutory processes, as applicable.

The intent of this rulemaking is to update and reorganize the existing regulations, eliminate redundancies across the sanctuary regulations, eliminate outmoded regulations, adopt standard boundary descriptions, and consolidate general regulations and permitting procedures. The regulatory changes are not expected to have a significant impact on a substantial number of small business entities. As a result, a regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Appeals, Appellant, Application requirements, Authorizations, Definitions, Designation, Environmental protection, Marine resources, Motorized personal watercraft, Natural resources, Permitting, Permit procedures, Prohibited activities, Special use permit, Stowed and not available for immediate use, Resources, Research, Traditional fishing, Water resources.

Nicole R. LeBoeuf

*Assistant Administrator for Ocean Services
and Coastal Zone Management,
National Ocean Service.*

Accordingly, for the reasons set forth above, NOAA is amending 15 CFR Part 922 as follows:

PART 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Revise subpart A to read as follows:

SUBPART A—Regulations Of General Applicability

Sec.

922.1 Purposes and applicability of the regulations.

922.2]Mission, goals, and special policies.

922.3 Issuance of regulations for fishing.

922.4 Boundaries.

922.5 Allowed activities.

922.6 Prohibited or otherwise regulated activities.

922.7 Emergency regulations.

922.8 Penalties.

922.9 Response costs and damages.

922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

922.11 Definitions.

922.12 Sanctuary nomination process.

922.13 Selection of nominated areas for national marine sanctuary designation.

§ 922.1 Purposes and applicability of the regulations.

(a) The purposes of this part are:

(1) To implement title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (16 U.S.C. 1431 *et seq.*, also known as the National Marine Sanctuaries Act (NMSA or Act)), the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) (Pub. L. 101-605) and the Hawaiian Islands National Marine Sanctuary Act (sections 2301-2307 of Pub. L. 102-587); and

(2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through T, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity and continued availability of

the conservation, recreational, ecological, historical, scientific, educational, cultural, archeological and aesthetic resources and qualities of these areas.

(b) The regulations of this part are binding on any person subject to the jurisdiction of the United States. Designation of a national marine sanctuary beyond the U.S. territorial sea does not constitute any claim to territorial jurisdiction on the part of the United States. The regulations of this part shall be applied in accordance with generally recognized principles of international law¹, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation of this part shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

(1) Generally recognized principles of international law;

(2) An agreement between the United States and the foreign state of which the person is a citizen; or

(3) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

(c) Unless noted otherwise, the regulations in Subparts A and D apply to all national marine sanctuaries immediately upon designation.

§ 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in the Act, the mission of the Office of National Marine Sanctuaries (Office) is to identify, designate, protect, restore, and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or aesthetic resources and qualities.

¹ Based on the legislative history of the NMSA, NOAA has long interpreted the text of [16 U.S.C. 1435\(a\)](#) as encompassing international law, including customary international law.

(b) The goal of the Office is to carry out the mission of the Act in a manner consistent with the purposes and policies of the Act (16 U.S.C. 1431(b)); the Florida Keys National Marine Sanctuary and Protection Act (Pub. L. 101-605) which designated Florida Keys National Marine Sanctuary; the Hawaiian Islands National Marine Sanctuary and Protection Act (Pub. L. 102-587), which designated Hawaiian Islands Humpback Whale National Marine Sanctuary; the Oceans Act of 1992 (Pub. L. 102-587), which designated Stellwagen Bank National Marine Sanctuary; and the National Marine Sanctuaries Preservation Act of 1996 (Pub. L. 104-283), which added Stetson Bank to Flower Garden Banks National Marine Sanctuary.

(c) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(d) Program regulations, policies, standards, guidelines, and procedures developed pursuant to the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 54 U.S.C. 300101 *et seq.*, the Archeological and Historical Preservation Act of 1974, 54 U.S.C. 312501 *et seq.*, and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa *et seq.* The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated national marine sanctuaries. The management of historical resources under the authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance.

§ 922.3 Issuance of regulations for fishing.

If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional Fishery Management Council(s). The appropriate Council(s) shall have one hundred and eighty (180) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishing regulations for the area within the exclusive economic zone and submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Any fishing activities not proposed for regulation under section 304(a)(5) of the NMSA may be listed in the draft Sanctuary designation document as being subject to regulation, without following the procedures specified in section 304(a)(5) of the NMSA. If the Secretary subsequently determines that regulation of fishing is necessary, then NOAA will follow the procedures specified in section 304(a)(5) of the NMSA.

§ 922.4 Boundaries.

The boundaries for each of the fifteen National Marine Sanctuaries covered by this part are described in subparts F through T, respectively.

§ 922.5 Allowed activities.

All activities (*e.g.*, fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through T, subject to any emergency regulations promulgated pursuant to § 922.7, 922.112(b), 922.165, 922.185, 922.196, 922.204, or 922.211 subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, tribal, or local authority of competent jurisdiction, including, but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the

NMSA. The Director may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

§ 922.6 Prohibited or otherwise regulated activities.

Subparts F through T set forth site-specific regulations applicable to the activities specified therein.

§ 922.7 Emergency regulations.

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.

(b) This section does not apply to the following national marine sanctuaries with site-specific regulations that establish procedures for issuing emergency regulations:

- (1) Cordell Bank National Marine Sanctuary, § 922.112(e).
- (2) Florida Keys National Marine Sanctuary, § 922.165.
- (3) Hawaiian Islands Humpback Whale National Marine Sanctuary, § 922.185.
- (4) Thunder Bay National Marine Sanctuary, § 922.196.
- (5) Mallows Bay-Potomac River National Marine Sanctuary, § 922.204.
- (6) Wisconsin Shipwreck Coast National Marine Sanctuary, § 922.211.

§ 922.8 Penalties.

(a) Each violation of the NMSA or the other statutes designating national marine sanctuaries listed in § 922 .2 (b), any regulation in this part or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons,

issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

§ 922.9 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. Any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable *in rem* to the United States for response costs and damages resulting from such destruction, loss, or injury.

§ 922.10 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

Any valid lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of final regulations for a designation or revised terms of designation of any National Marine Sanctuary may not be terminated by the Director. The Director may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

§ 922.11 Definitions.

The following definitions shall apply to this part, unless modified by the definitions for a specific subpart or regulation:

Abandoning means leaving without intent to remove any structure, material, or other matter on or in the seabed or submerged lands of a Sanctuary. For Thunder Bay National Marine Sanctuary and Underwater Preserve, abandoning means leaving without intent to remove any structure, material or other matter on the lake bottom associated with underwater cultural resources.

Act or NMSA means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.*, also known as the National Marine Sanctuaries Act.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA) or designee.

Attract or attracting means the conduct of any activity that lures or may lure any animal by using food, bait, chum, dyes, decoys (*e.g.*, surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (*e.g.*, swimmers, divers, boaters, kayakers, surfers).

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the sea/ocean/lake bottom that is periodically or permanently covered by water.

Clean means not containing detectable levels of harmful matter.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals, including any attempt to engage in such activity.

Conventional hook and line gear means any fishing gear composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hand, electrically, or hydraulically operated, regardless of whether mounted. This term does not include longlines.

Cruise ship means any vessel with 250 or more passenger berths for hire.

Cultural resource means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Deserting means leaving a vessel aground, adrift, wrecked, junked, or in a substantially dismantled condition without notification to the Director of the vessel going aground or becoming adrift, wrecked, junked, or substantially dismantled within 12 hours of its discovery and developing and presenting to the Director a preliminary salvage plan within 24 hours of such notification; after expressing or otherwise manifesting intention

not to undertake or to cease salvage efforts, or when the owner/operator cannot after reasonable efforts by the Director be reached within 12 hours of the vessel's condition being reported to authorities; or leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Director means, except where otherwise specified, the Director of the Office of National Marine Sanctuaries or designee.

Effective date means the date of final regulations described and published in the Federal Register. For regulations governing the designation of a new sanctuary or revising terms of designation, effective date means the date after the close of the review period of the 45th day of continuous session of Congress following submission of the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, unless the Governor of any state in which the sanctuary is completely or partially located certifies that the designation or any of its terms is unacceptable pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)).

Exclusive economic zone means the zone established by Proclamation 5030, dated March 10, 1983, and as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended 16 U.S.C. 1801 *et seq.*

Fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds, as defined in the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1802(12)).

Graywater means graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may

pose a present or potential threat of injury to Sanctuary resources or qualities. Such substances or combination of substances may include, but is not limited to: fishing nets, fishing line, hooks, fuel, oil, and hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) and designated at 40 CFR 302.4.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including a site, contextual information, structure, district, and object significantly associated with or representative of earlier people, culture, maritime heritage, and human activities and events. Historical resource includes “cultural resource,” “submerged cultural resource,” and “historical property” as that term is used in the National Historic Preservation Act, as amended, 54 U.S.C. 300101 *et seq.* and its implementing regulations, as amended.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

Injure or injury means to change adversely, either in the short or long term, a chemical, biological or physical attribute, or the viability, of a sanctuary resource. This includes, but is not limited to, to cause the loss of or destroy.

Introduced species means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Inventory means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

Lawful fishing means fishing authorized by a tribal, State or Federal entity with jurisdiction over the activity.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary or Sanctuary means an area of the marine environment of special national significance designated as such by the National Oceanic and Atmospheric Administration (NOAA) pursuant to the Act or by Congress pursuant to legislation.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of a national marine sanctuary, including, but not limited to, water quality, sediment quality, and air quality.

Sanctuary resource means any living or non-living resource of a national marine sanctuary, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource is defined at § 922.191. For Hawaiian Islands Humpback Whale, Sanctuary resource is defined at § 922.182. For Malloes Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211.

Seagrass means any species of marine angiosperms (flowering plants) that inhabits a portion of the seabed in a national marine sanctuary. Those species include, but are not limited to: *Zostera asiatica* (Asian eelgrass), *Zostera marina* (eelgrass/common eelgrass); *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens* (paddle grass), *H. engelmannii* (Engelmann's seagrass), *H. johnsonii* (Johnson's seagrass); and *Ruppia maritima* (widgeon grass).

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take (taking or taken) of a marine mammal, sea turtle, or bird means:

(1) Take as that term is defined in section 3(19) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1532(19) (ESA);

(2) Take as that term is defined in section 3(13) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1362(13) (MMPA); or

(3) Conducting an activity prohibited by section 703 of the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 (MBTA).

For purposes of paragraphs (1), (2), and (3) of this definition, take also includes, but is not limited to, collection of any dead or injured marine mammal, sea turtle, or bird, or any part thereof; or restraint or detainment of any marine mammal, sea turtle, or bird, no matter how temporarily; tagging any marine mammal, sea turtle, or bird, or operating a vessel or aircraft or conducting any other act that results in the disturbance or molestation of any marine mammal, sea turtle, or bird.

Vessel means a watercraft of any description capable of being used as a means of transportation in or on the waters of a sanctuary. The term includes but is not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes

while maneuvering on the water. For purposes of this part, the terms “vessel,” “watercraft,” and “boat” have the same meaning.

Washington Coast treaty tribe means the Hoh, Makah, or Quileute Indian Tribes or the Quinault Indian Nation.

§ 922.12 Sanctuary Nomination Process

(a) *Nomination process.* The sanctuary nomination process (*see* National Marine Sanctuaries Web site www.sanctuaries.noaa.gov) is the means by which the public can submit areas of the marine and Great Lakes environments for consideration by NOAA as a national marine sanctuary.

(b) *National significance criteria.* The Director will consider the following in determining if a nominated area is of special national significance:

(1) The area’s natural resources and ecological qualities are of special significance and contribute to: biological productivity or diversity; maintenance or enhancement of ecosystem structure and function; maintenance of ecologically or commercially important species or species assemblages; maintenance or enhancement of critical habitat, representative biogeographic assemblages, or both; or maintenance or enhancement of connectivity to other ecologically significant resources.

(2) The area contains submerged maritime heritage resources of special historical, cultural, or archaeological significance, that: individually or collectively are consistent with the criteria of eligibility or listing on the National Register of Historic Places; have met or which would meet the criteria for designation as a National Historic Landmark; or have special or sacred meaning to the indigenous people of the region or nation.

(3) The area supports present and potential economic uses, such as: tourism; commercial and recreational fishing; subsistence and traditional uses; diving; and other recreational uses that depend on conservation and management of the area’s resources.

(4) The publicly-derived benefits of the area, such as aesthetic value, public recreation, and access to places depend on conservation and management of the area's resources.

(c) *Management considerations.* The Director will consider the following in determining the manageability of a nominated area:

(1) The area provides or enhances opportunities for research in marine science, including marine archaeology.

(2) The area provides or enhances opportunities for education, including the understanding and appreciation of the marine and Great Lakes environments.

(3) Adverse impacts from current or future uses and activities threaten the area's significance, values, qualities, and resources.

(4) A national marine sanctuary would provide unique conservation and management value for this area that also have beneficial values for adjacent areas.

(5) The existing regulatory and management authorities for the area could be supplemented or complemented to meet the conservation and management goals for the area.

(6) There are commitments or possible commitments for partnerships opportunities such as cost sharing, office space or exhibit space, vessel time, or other collaborations to aid conservation or management programs for the area.

(7) There is community-based support for the nomination expressed by a broad range of interests, such as: individuals or locally-based groups (*e.g.*, friends of group, chamber of commerce); local, tribal, state, or national agencies; elected officials; or topic-based stakeholder groups, at the local, regional or national level (*e.g.*, a local chapter of an environmental organization, a regionally-based fishing group, a national-level recreation or tourism organization, academia or science-based group, or an industry association).

(d) Following evaluation of a nomination against the national significance criteria and management considerations, the Director may place nominated areas in a publicly available inventory for future consideration of designation as a national marine sanctuary.

(e) A determination that a site is eligible for national marine sanctuary designation, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

§ 922.13 Selection of nominated areas for national marine sanctuary designation.

(a) The Director may select a nominated area from the inventory for future consideration as a national marine sanctuary.

(b) Selection of a nominated area from the inventory shall begin the formal sanctuary designation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and posted on the Office of National Marine Sanctuaries website. Any designation process will follow the procedures for designation and implementation set forth in section 304 of the Act.

Subpart B [Removed and Reserved]

3. Remove and reserve subpart B.

Subpart C—[Removed and Reserved]

4. Remove and reserve part 922 subpart C.

5. Revise subpart D to read as follows:

SUBPART D—NATIONAL MARINE SANCTUARY PERMITTING

Sec.

922.30 National Marine Sanctuary general permits.

922.31 National Marine Sanctuary special use permits.

922.32 Application requirements and procedures.

922.33 Review procedures and evaluation.

922.34 Permit amendments.

922.35 Special use permit fees.

922.36 National Marine Sanctuary authorizations.

922.37 Appeals of permitting decisions.

§ 922.30 National Marine Sanctuary general permits.

(a) *Authority to issue general permits.* The Director may allow a person to conduct an activity that would otherwise be prohibited by this part through issuance of a general permit, provided the applicant complies with:

(1) The provisions of this subpart; and

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site specific regulations appearing in subparts F through T.

(b) *Sanctuary general permit categories.* The Director may issue a sanctuary general permit under this subpart and the relevant site-specific subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories or a category in the relevant site-specific subpart:

(1) Research - activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality;

(2) Education - activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality;

(3) Management - activities that assist in managing a national marine sanctuary;

(4) Jade removal - the removal of loose jade from the Jade Cove area, without the use of pneumatic, mechanical, electrical, hydraulic or explosive tools, within Monterey Bay National Marine Sanctuary that cannot be collected under 15 CFR 922.132(a)(1)(ii) and (iii). Preference will be given for applications proposing to collect loose pieces of jade for research or educational purposes;

(5) Tribal self-determination - activities conducted by a Washington Coast treaty tribe and/or its designee as certified by the governing body of the tribe to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights, the economic development of the tribe, subsistence, ceremonial and spiritual activities, or the education or training of tribal members; and

(6) Further FKNMS purposes – activities that further the purposes of Florida Keys National Marine Sanctuary, including those that facilitate multiple use of the sanctuary, to the extent compatible with the primary objective of resource protection.

§ 922.31 National Marine Sanctuary special use permits.

(a) *In general.* A person may conduct a specified special use permit activity, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, manner, terms and conditions of, a special use permit issued under this section.

(b) *Authority to issue.* The Director, at his or her discretion, may issue a special use permit in accordance with this subpart and section 310 of the Act (16 U.S.C. 1441).

(c) *Public notice.* The Director will not issue a special use permit for any category of activity unless the Director has published a notice in the Federal Register that such category of activity is subject to the requirements of section 310 of the Act.

(d) *Fees.* The Director may assess and collect fees for the conduct of any activity authorized by a special use permit issued pursuant to this section. The fee will be assessed in accordance with § 922.35.

§ 922.32 Application requirements and procedures.

(a) *Submitting applications.* Permit applications must be submitted by mail to the address listed in the subpart for the relevant national marine sanctuary or by electronic means as defined in the instructions for the ONMS permit application. Applicants proposing to conduct an activity in more than one national marine sanctuary should send

the application to each NOAA office for the relevant national marine sanctuaries in which the activity is proposed.

(b) *Application requirements.* All applications for a permit under this section must include the following information:

(1) A detailed description of the proposed activity including:

(i) A timetable for completion of the activity;

(ii) A detailed description of the proposed location for the activity; and

(iii) The equipment, personnel and methodology to be employed;

(2) The qualifications and experience of all personnel;

(3) The financial resources available to the applicant to conduct and complete the proposed activity and comply with any terms and conditions deemed necessary;

(4) A statement as to why it is necessary to conduct the activity within a national marine sanctuary;

(5) A description of the potential impacts of the activity, if any, on sanctuary resources and qualities;

(6) A description of the benefits the conduct of the activity would have for the national marine sanctuary or national marine sanctuary system;

(7) Copies of all other required licenses, permits, approvals, or other authorizations; and

(8) Such other information as the Director may request or is specified in the relevant subpart.

(c) *Additional information.* Upon receipt of an application, and as part of the evaluation of the permit application, the Director may:

(1) Request such additional information as he or she deems necessary to act on the application;

(2) Require a site visit; and

(3) Seek the views of any persons.

(d) *Time limit for submitting additional information.* Unless otherwise specified in writing by the Director, any information requested by the Director under paragraph (c) of this section must be received by the Director within 30 days of the postmark date of the request or, if email, the date of the email. Failure to provide such additional information may be deemed by the Director to constitute withdrawal of the permit application.

(e) *Incomplete applications.* The Director may consider an application incomplete, and therefore may refuse to further consider the application, if the applicant:

(1) Has failed to submit any of the information required under paragraph (b);

(2) Has failed to submit any of the information requested by the Director under paragraph (c) of this section;

(3) Has failed to pay any outstanding penalties that resulted from a violation of this part; or

(4) Has failed to fully comply with a permit issued pursuant to this subpart.

§ 922.33 Review procedures and evaluation.

(a) *Review criteria.* In addition to any relevant site-specific permit review criteria, the Director shall not issue a permit under this subpart or the relevant subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors: the extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and any indirect or cumulative effects of the activity;

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and avoid, minimize, or otherwise mitigate adverse effects on sanctuary resources and qualities as much as possible;

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose;

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity;

(6) The applicant is professionally qualified to conduct and complete the proposed activity;

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit;

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate; and

(9) For Olympic Coast National Marine Sanctuary, the activity as proposed does not adversely affect any Washington Coast treaty tribe.

(b) *Permit terms and conditions.* The Director, at his or her discretion, may subject a permit issued under this subpart or other relevant subpart to such terms and conditions as he or she deems appropriate. A permit granted pursuant to this subpart is nontransferable.

(c) *Permit actions.* The Director may amend, suspend, or revoke a permit issued pursuant to this part or other relevant subpart for good cause. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(d) *Denial of permit application.* The Director may deny a permit application, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms and conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

§ 922.34 Permit amendments.

(a) *Request for amendments.* Any person who has been issued a permit under this part (a permittee) may request to amend the permit at any time while that permit is valid. For purposes of this section, a permit time extension is treated as a permit amendment. A request for permit amendment must be submitted to the same NOAA office(s) as the original permit and include sufficient information to describe the requested amendment and any additional supporting information.

(b) *Review of amendment requests.* After receiving the permittee's request for amendment, the Director will:

(1) Review all reports submitted by the permittee as required by the permit terms and conditions; and

(2) Request such additional information as may be necessary to evaluate the request.

(c) *Denial of amendment request.* The Director may deny a permit amendment request, in whole or in part, if it is determined that:

(1) The proposed activity does not meet the review criteria specified in this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(2) The permittee or applicant has acted in violation of the terms or conditions of a permit issued under this subpart or the relevant subpart of any national marine sanctuary in which the proposed activity is to take place;

(3) The permittee or applicant has acted in violation of any regulation set forth in this subpart, the NMSA, or the FKNMSPA;

(4) The proposed activity has resulted in unforeseen adverse impacts to Sanctuary resources or qualities; or

(5) For other good cause.

§ 922.35 Special Use Permit fees.

(a) *Authority to assess fees.* The Director may assess a fee for the conduct of any activity authorized under a special use permit issued under § 922.31. The Director may collect assessed fees through agreement with the permit applicant. No special use permit may be effective until all assessed fees are received unless otherwise provided by the Director by a fee schedule set forth as a permit condition.

(b) *Components of permit fees.* A fee assessed under this section may include:

(1) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(i) Personnel;

(ii) Personnel hours;

- (iii) Equipment;
 - (iv) Environmental analysis, assessment or consultation;
 - (v) Copying; and
 - (vi) Overhead costs directly related to reviewing and processing the permit application;
- (2) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the permit is being issued, including, but not limited to:
- (i) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to sanctuary resources and qualities;
 - (ii) The use of an official NOAA observer, including travel and expenses and personnel hours; and
 - (iii) Overhead costs directly related to the permitted activity; and
- (3) An amount which represents the fair market value of the use of the sanctuary resource.

§ 922.36 National Marine Sanctuary authorizations.

(a) *Authority to issue authorizations.* The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P or subpart R of this part, if such activity is specifically allowed by any valid federal, state, or local lease, permit, license, approval, or other authorization (hereafter called “agency approval”) issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by ONMS is hereafter referred to as an “ONMS authorization.”

(b) *Authorization notification to the Director* ~~–~~(1) *Notification requirement.* An applicant must notify the Director in writing of the request for an ONMS authorization of an agency approval. The Director may treat an amendment or extension of such an agency approval as constituting a new agency approval for purposes of this section.

(i) Notification must occur within fifteen days after the date the applicant files of filing of the application for the agency approval.

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, or subpart R through S, as appropriate.

(iii) A copy of the application for the agency approval must accompany the notification.

(2) *Director's response to notification.* The Director shall respond in writing to the applicant and provide periodic updates on pending ONMS authorization request.

(c) *Authorization review procedures and evaluation--(1) Additional information.* The Director may request additional information from the applicant as the Director deems reasonably necessary to determine whether to issue an ONMS authorization and what terms and conditions are reasonably necessary to protect sanctuary resources and qualities.

(i) The information requested must be received by the Director within 45 days of the postmark date of the Director's request.

(ii) The Director may seek the views of any persons on the application.

(2) *Review criteria.* The Director shall consider the review criteria in § 922.33(a)(1)-(9) when deciding whether to issue an ONMS authorization.

(3) *Director's response.* The Director shall respond in writing to the applicant to inform the applicant of the Director's decision regarding the authorization request.

(i) The Director may deny a request for an ONMS authorization and shall provide the reason(s) therefore. If the Director denies a request for an ONMS authorization, the applicant remains prohibited from conducting the activity in the sanctuary.

(ii) The Director may issue an ONMS authorization containing terms and conditions deemed reasonably necessary to protect sanctuary resources and qualities.

Failure to comply with an ONMS authorization constitutes a violation of the NMSA and these regulations, which may result in an enforcement action and assessment of penalties.

(d) *Authorization actions.* The Director may amend, suspend, or revoke an ONMS authorization issued pursuant to this part for good cause. Procedures governing ONMS sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

(e) *Communication of actions and denials.* Any action taken by the Director under paragraphs (c) and (d) of this section to deny, amend, suspend, or revoke an ONMS authorization shall be communicated in writing to the permittee or applicant and shall set forth the reason(s) for the action taken.

(f) *Time limits.* Any time limit prescribed in or established under § 922.36 may be extended by the Director for good cause.

§ 922.37 Appeals of permitting decisions.

(a) *Potential appellant.* The following person may appeal an action listed in paragraph (b) of this section (hereinafter referred to as “appellant”):

(1) An applicant or holder of a certification of any existing lease, permit, license, or right of subsistence use or of access pursuant to § 922.10;

(2) An applicant or a holder of a National Marine Sanctuary permit issued pursuant to § 922.30 or pursuant to site-specific regulations appearing in subparts F through T of this part;

(3) An applicant or a holder of a special use permit issued pursuant to section 310 of the Act and § 922.31; and

(4) An applicant or a holder of an ONMS authorization of an agency approval issued by any Federal, State, or local authority of competent jurisdiction pursuant to § 922.36.

(b) *Actions that may be appealed.* An appellant may appeal the following actions to the Assistant Administrator:

(1) The denial, conditioning, amendment, suspension, or revocation by the Director of a general permit pursuant to § 922.30 or other relevant subpart, special use permit pursuant to section 310 of the Act and § 922.31, or an ONMS authorization issued pursuant to § 922.36; or a certification under § 922.10.

(2) Reserved.

(c) *Appeal requirements.* Appeals must be made in writing to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910 and must:

(1) State the action(s) by the Director being appealed;

(2) State the reason(s) for the appeal; and

(3) Be received within 30 days of the appellant's receipt of notice of the action by the Director.

(d) *Appeal procedures.* (1) The Assistant Administrator may request the appellant submit such information as the Assistant Administrator deems necessary in order to render a decision on the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request.

(2) The Assistant Administrator may seek the views of any other persons when deciding an appeal.

(3) The Assistant Administrator may hold an informal hearing. If an informal hearing is held:

(i) The Assistant Administrator may designate an officer before whom the hearing shall be held;

(ii) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing;

(iii) The appellant and Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer; and

(iv) The hearing officer shall recommend a decision in writing to the Assistant Administrator within 60 days after the record for the hearing closes.

(e) *Deciding an appeal.* (1) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted at the Assistant Administrator's request pursuant to paragraphs (d)(1) or (d)(2) of this section, regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision.

(2) The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing.

(3) The Assistant Administrator's decision shall constitute final agency action for purposes of the Administrative Procedure Act.

(f) *Authority to extend time limits.* Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal pursuant to paragraph (c)(3) of this section may be extended by the Assistant Administrator for good cause.

Subpart E [Removed and Reserved]

6. Remove and reserve subpart E.

SUBPART F—MONITOR NATIONAL MARINE SANCTUARY

7. Revise § 922.60 to read as follows:

§ 922.60 Boundary.

The Monitor National Marine Sanctuary (Sanctuary) consists of a vertical water column in the Atlantic Ocean one mile in diameter (0.593 square nautical miles (nmi²) or

(0.785 sq. mi.)) extending from the surface to the seabed, the center of which is at the following coordinates 35.00639, -75.40889.

8. Revise § 922.62 to read as follows:

§ 922.62 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.61 if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monitor National Marine Sanctuary, c/o The Mariners' Museum, 100 Museum Drive, Newport News, VA 23606.

(c) In addition to the requirements of subpart D of this part, the Director may not issue a permit under this section unless the Director also finds that the extent to which the conduct of the proposed activity may diminish the value of the Monitor as a source of historic, cultural, aesthetic and/or maritime information is appropriate in relation to goals of the proposed activity.

(d) In considering any application submitted pursuant to this section, the Director shall seek and consider the views of the Advisory Council on Historic Preservation.

SUBPART G – CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

9. Amend § 922.70 by revising the first sentence to read as follows:

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of approximately 1,110 square nautical miles (nmi²) (1,470 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the southern coast of California. * * *

10. Amend § 922.71 by:

a. Revising the introductory text; and

b. Removing the definitions of “Cruise ship”, “Graywater”, and “Introduced species”.

The revision reads as follows:

§ 922.71 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

11. Amend § 922.72 by revising paragraph (c) to read as follows:

§ 922.72 Prohibited or otherwise regulated activities-Sanctuary wide.

* * * * *

(c) The prohibitions in paragraphs (a)(3) through (a)(10), (a)(12), and (a)(13) of this section and in § 922.73 do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.74.

* * * * *

12. Revise § 922.74 to read as follows:

§ 922.74 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.72 or § 922.73 if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Permit applications should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Channel Islands National Marine Sanctuary, University of California Santa Barbara, Ocean Science Education Building 514, MC 6155, Santa Barbara, CA 93106-6155.

SUBPART H – GREATER FARALLONES NATIONAL MARINE SANCTUARY

13. Amend § 922.80 by revising the first sentence in paragraph (a) to read as follows:

§ 922.80 Boundary.

(a) Greater Farallones National Marine Sanctuary (Sanctuary) encompasses an area of approximately 2,488 square nautical miles (nmi²) (3,295 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, surrounding the Farallon Islands and Noonday Rock along the northern coast of California. * * *

* * * * *

14. Amend § 922.81 by –

- a. Revising the introductory text of § 922.81; and
- b. Removing the definitions of “Attract or attracting”, “Clean”, “Deserting”, “Harmful matter”, “Introduced species”, and “Seagrass”.

The revision reads as follows:

§ 922.81 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

15. Amend § 922.82 by revising paragraph (c) and (d) to read as follows:

§ 922.82 Prohibited or otherwise regulated activities.

* * * * *

(c) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part.

(d) The prohibitions in paragraphs (a)(2) through (9) and (a)(11) through (16) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued in accordance with subpart D of this part and § 922.83, or a special use permit issued pursuant to subpart D of this part.

16. Revise § 922.83 to read as follows:

§ 922.83 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.82 (a)(2) through (9) and (a)(11) through (16) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Greater Farallones National Marine Sanctuary, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

SUBPART I – GRAY’S REEF NATIONAL MARINE SANCTUARY

17. Amend § 922.90 to read as follows:

§ 922.90 Boundary.

The Gray’s Reef National Marine Sanctuary (Sanctuary) consists of approximately 16.68 square nautical miles (nmi²) (22 sq. mi.) of ocean waters and the submerged lands thereunder, off the coast of Georgia. The Sanctuary boundary includes all waters and submerged lands within the geodetic lines connecting the following coordinates. (Coordinates listed are unprojected (geographic) and based on the North American Datum of 1983.):

Point	Latitude	Longitude
1	31.36273	-80.92120
2	31.42106	-80.92120
3	31.42106	-80.82814
4	31.36273	-80.82814
5	31.36273	-80.92120

18. Amend § 922.91 by revising the introductory text to read as follows:

§ 922.91 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

19. Amend § 922.92 by revising paragraphs (a) and (c) as follows:

§ 922.92 Prohibited or otherwise regulated activities.

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.93 and § 922.94, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

* * * * *

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.93.

* * * * *

20. Revise § 922.93 to read as follows:

§ 922.93 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.92(a)(1) through (11), and § 922.94 if the activity is specifically authorized by and conducted in accordance within the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411.

SUBPART J –NATIONAL MARINE SANCTUARY OF AMERICAN SAMOA

21. Amend § 922.101 by revising the introductory text and paragraph (a) to read as follows:

§ 922.101 Boundary.

The Sanctuary is comprised of six distinct units, forming a network of marine protected areas around the islands of the Territory of American Samoa. Tables containing the exact coordinates of each point described below can be found in Appendix to Subpart J—National Marine Sanctuary of American Samoa Boundary Coordinates. The total areal estimate of the six units combined is 10,255 nmi² (13,581 sq. mi.).

(a) *Fagatele Bay Unit.* The Fagatele Bay unit is a coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, Territory of American Samoa, and includes Fagatele Bay in its entirety. The landward boundary is defined by the mean high high water line of Fagatele Bay until the point at which it intersects the seaward boundary of the Sanctuary as defined by a straight line between Fagatele Point (–14.36527, –170.76932) and Steps Point (–14.37291, –170.76056) from the point at which it intersects the mean high high water line seaward.

* * * * *

22. Amend § 922.102 by –

- a. Revising the introductory text of § 922.102; and
- b. Removing the definitions of “Clean”, “Fishing”, “Harmful matter”, and “Introduced species”.

The revision reads as follows:

§ 922.102 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

23. Amend § 922.103 by revising paragraph (e) to read as follows:

§ 922.103 Prohibited or otherwise regulated activities—Sanctuary-wide.

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (15) of this section, § 922.104, and § 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.107.

24. Revise § 922.107 to read as follows:

§ 922.107 Permit procedures.

(a) Any person in possession of a valid permit issued by the Director, in consultation with the ASDOC, in accordance with this section and subpart D of the part may conduct an activity otherwise prohibited by § 922.103, § 922.104, and § 922.105 in the Sanctuary.

(b) Permit applications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, American Samoa National Marine Sanctuary, P.O. Box 4318, Pago Pago, AS 96799.

SUBPART K – CORDELL BANK NATIONAL MARINE SANCTUARY

25. Amend § 922.110 by revising the first sentence to read as follows:

§ 922.110 Boundary.

The Cordell Bank National Marine Sanctuary (Sanctuary) boundary encompasses a total area of approximately 971 square nautical miles (nmi²) (1,286 sq. mi.) of offshore ocean waters, and submerged lands thereunder, surrounding the submarine plateau known as Cordell Bank along the northern coast of California, approximately 45 nautical miles west-northwest of San Francisco, California. * * *

§ 922.111 [Removed and Reserved]

26. Remove and reserve § 922.111.

27. Amend § 922.112 by revising paragraphs (b) and (d) as follows:

§ 922.112 Prohibited or otherwise regulated activities.

* * * * *

(b) The prohibitions in paragraph (a) of this section do not apply to activities necessary to respond to an emergency threatening life, property or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.113.

* * * * *

(d) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.113, or a special use permit issued pursuant to subpart D of this part.

* * * * *

28. Revise § 922.113 to read as follows:

§ 922.113 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.112 (a)(2) through (7) if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Cordell Bank National Marine Sanctuary, P.O. Box 159, Olema, CA 94950.

SUBPART L – FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

29. Revise § 922.120 to read as follows:

§ 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary) consists of three separate areas of ocean waters over and surrounding the East and West Flower

Garden Banks and Stetson Bank, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (nmi) south-southwest of Cameron, Louisiana, and encompasses 19.20 square nautical miles (nmi²) (25 sq. mi.). The area designated at the West Bank is located approximately 110 nmi southeast of Galveston, Texas, and encompasses 22.61 nmi² (30 sq. mi.). The area designated at Stetson Bank is located approximately 70 nmi southeast of Galveston, Texas, and encompasses 0.64 nmi² (0.84 sq. mi.). The three areas encompass a total of 42.5 nmi² (56 sq. mi.). The boundary coordinates for each area are listed in appendix A to this subpart.

30. Amend § 922.121 by –

- a. Revise the introductory text of § 922.121; and
- b. Removing the definitions of “Attract or attracting” and “Clean”.

The revision reads as follows:

§ 922.121 Definitions.

In addition to those definitions found at § 922.11, the following definitions applies to this subpart:

* * * * *

31. Amend § 922.122 by revising paragraphs (a)(7), (f) and (h) to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) * * *

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

* * * * *

(f) The prohibitions in paragraphs (a)(2) through (10) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and § 922.123 or a special use permit issued pursuant to subpart D of this part.

* * * * *

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under subpart D of this part and § 922.123 authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after January 18, 1994 shall be invalid.

32. Revise § 922.123 to read as follows:

§ 922.123 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.122(a) (2) through (10) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

33. Revise Appendix A to Subpart L of Part 922 to read as follows:

Appendix A to Subpart L of Part 922—Flower Garden Banks National

Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude (N)	Longitude (W)
East Flower Garden Bank:		
E-1	27.88190	-93.62829
E-2	27.89328	-93.63997
E-3	27.92073	-93.64469
E-4	27.95880	-93.64273
E-5	27.97462	-93.62963
E-6	27.98399	-93.59230
E-7	27.98374	-93.58618
E-8	27.92315	-93.57092
E-9	27.90140	-93.57206
E-10	27.89102	-93.58487
E-11	27.88140	-93.61605
West Flower Garden Bank:		
W-1	27.81976	-93.84607
W-2	27.83704	-93.86973
W-3	27.85384	-93.88117
W-4	27.85927	-93.88090
W-5	27.88080	-93.87371
W-6	27.91720	-93.82896
W-7	27.91647	-93.81059
W-8	27.91006	-93.78636
W-9	27.90438	-93.78051
W-10	27.89350	-93.78106
W-11	27.88287	-93.78773
W-12	27.84479	-93.78964
W-13	27.81997	-93.81202

Stetson Bank:		
S-1	28.15862	-94.30888
S-2	28.16950	-94.30839
S-3	28.16884	-94.28997
S-4	28.15796	-94.29047

SUBPART M – MONTEREY BAY NATIONAL MARINE SANCTUARY

34. Revise § 922.130 introductory text and the first sentence of paragraph (b) to read as follows:

§ 922.130 Boundary.

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. The combined area of both parts is approximately 4,601 square nautical miles (nmi²) (6,093 sq. mi.). (a) The first area consists of an area of approximately 4,016 square nautical miles (nmi²) (5,318 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California.

** * * *

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi (nmi²) (774 sq. mi.) of ocean waters and the submerged lands thereunder. * * *

35. Amend § 922.131 by –

- a. Revising the introductory text of § 922.131; and
- b. Removing the definitions of “Attract or attracting”, “Clean”, “Cruise ship”, “Deserting”, “Harmful matter”, and “Introduced species”.

The revision reads as follows:

§ 922.131 Definitions.

In addition to those definitions found at 15 CFR 922.11, the following definitions apply to this subpart:

* * * * *

36. Amend § 922.132 by revising paragraphs (c)(1) and (d) through (f) to read as follows:

§ 922.132 Prohibited or otherwise regulated activities.

* * * * *

(c)(1) All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (11) and (a)(13) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). (Copies of the FEIS/MP are available from the Monterey Bay National Marine Sanctuary, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.) For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2008 Final Environmental Impact Statement. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (11) and (a)(13) of this section by the Director after consultation between the Director and the Department of Defense.

* * * * *

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (a)(13) of this section, do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.133 or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (a)(13) of this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part authorizing, or otherwise approve, the exploration for, development, or production of oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.10, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) before January 1, 1993. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

37. Revise § 922.133 to read as follows:

§ 922.133 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.132(a)(1) as it pertains to jade collection in the Sanctuary, § 922.132(a)(2) through (11), and (a)(13) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Bldg. 455A, Monterey, California 93940.

SUBPART N – STELLWAGEN BANK NATIONAL MARINE SANCTUARY

38. Amend § 922.140 by revising the first sentence in paragraph (a) and revising paragraph (b) to read as follows:

§ 922.140 Boundary.

(a) The Stellwagen Bank National Marine Sanctuary (Sanctuary) consists of an area of approximately 639 square nautical miles (nmi²) (846 sq. mi.) of Federal marine waters and the submerged lands thereunder, over and around Stellwagen Bank and other submerged features off the coast of Massachusetts. * * *

(b) The Sanctuary boundary is identified by the following coordinates, indicating the most northeast, southeast, southwest, west-northwest, and north-northwest points: 42.76672 -70.21664 (NE); 42.09330 -70.03506 (SE); 42.12924 -70.47043 (SW); 42.54830 -70.59737 (WNW); and 42.65123 -70.50262 (NNW). The western border is formed by a straight line connecting the most southwest and the west-northwest points of the Sanctuary. At the most west-northwest point, the Sanctuary border follows a line contiguous with the three-mile jurisdictional boundary of Massachusetts to the most north-northwest point. From this point, the northern border is formed by a straight line connecting the most north-northwest point and the most northeast point. The eastern border is formed by a straight line connecting the most northeast and the most southeast points of the Sanctuary. The southern border follows a straight line between the most southwest point and a point located at 42.11526 -70.27800. From that point, the southern border then continues in a west-to-east direction along a line contiguous with the three-mile jurisdictional boundary of Massachusetts until reaching the most southeast point of the Sanctuary. The boundary coordinates are listed in appendix A to this subpart.

39. Amend § 922.141 by revising the introductory text and the definition of “Industrial material” to read as follows:

§ 922.141 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

Industrial material means mineral, as defined in § 922.11.

* * * * *

40. Amend § 922.142 by revising paragraphs (d) and (f) to read as follows:

§ 922.142 Prohibited or otherwise regulated activities:

* * * * *

(d) The prohibitions in paragraphs (a) (1) and (3) through (7) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.143 or a special use permit issued pursuant to subpart D of this part.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under subpart D of this part and § 922.143, or under section 310 of the act, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to § 922.10, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

41. Revise § 922.143 to read as follows:

§ 922.143 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.142 (a)(1) and (3) through (7) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066.

42. Revise Appendix A to Subpart N of Part 922 to read as follows:

Appendix A to Subpart N of Part 922—Stellwagen Bank National Marine Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Pt.	Latitude	Longitude
E1	42.76672	-70.21664
E2	42.09330	-70.03506
E3	42.10239	-70.05434
E4	42.10081	-70.06707
E5	42.11752	-70.08658
E6	42.12038	-70.10607
E7	42.12675	-70.12388
E8	42.12853	-70.14005
E9	42.13342	-70.15497
E10	42.13481	-70.17292
E11	42.13210	-70.19605
E12	42.13339	-70.21707
E13	42.12970	-70.23889
E14	42.12435	-70.25585
E15	42.11526	-70.27800

E16	42.12924	-70.47043
E17	42.54830	-70.59737
E18	42.55850	-70.58697
E19	42.56347	-70.58388
E20	42.57522	-70.57254
E21	42.58075	-70.55558
E22	42.58790	-70.54179
E23	42.59504	-70.52843
E24	42.60651	-70.51587
E25	42.62107	-70.50588
E26	42.63312	-70.50132
E27	42.64245	-70.50130
E28	42.65123	-70.50262

SUBPART O – OLYMPIC COAST NATIONAL MARINE SANCTUARY

43. Amend § 922.150 by revising paragraph (a) to read as follows:

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi²) (3,188 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

* * * * *

44. Amend § 922.151 by –

- a. Revising the introductory text; and
- b. Removing the definitions of “Clean”, “Cruise ship”, and “Harmful matter”.

The revision reads as follows:

§ 922.151 Definitions.

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

45. Amend § 922.152 by revising paragraphs (a)(5) introductory text, (e) and (h) to read as follows:

§ 922.152 Prohibited or otherwise regulated activities:

(a) * * *

(5) Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged lands of the Sanctuary, except as an incidental result of:

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity specifically authorized by and conducted under and in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit or an ONMS authorization issued pursuant to subpart D of this part and § 922.153 or a special use permit issued pursuant to subpart D of this part

* * * * *

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part and § 922.153 or a special use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.10, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

46. Revise § 922.153 to read as follows:

§ 922.153 Permit procedures.

(a) A person may conduct an activity prohibited by § 922.152 (a)(2) through (8) if conducted in accordance with the scope, purpose, terms and conditions of a permit or ONMS authorization issued under this section and subpart D of this part.

(b) Applications for such permits or ONMS authorizations should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 E. Railroad Ave., Suite 301, Port Angeles, WA 98362.

(c) The Director shall obtain the express written consent of the governing body of an Indian tribe prior to issuing a permit, if the proposed activity involves or affects resources of cultural or historical significance to the tribe.

(d) Removal or attempted removal of any Indian cultural resource or artifact may only occur with the express written consent of the governing body of the tribe or tribes to which such resource or artifact pertains, and certification by the Director that such activities occur in a manner that minimizes damage to the biological and archeological resources. Prior to permitting entry onto a significant cultural site designated by a tribal governing body, the Director shall require the express written consent of the governing body of the tribe or tribes to which such cultural site pertains.

(e) Where the issuance or denial of a permit is requested by the governing body of a Washington Coast treaty tribe, the Director shall consider and protect the interests of the tribe to the fullest extent practicable in keeping with the purposes of the Sanctuary and his or her fiduciary duties to the tribe.

47. Revise Appendix A to Subpart O of Part 922 to read as follows:

Appendix A to Subpart O of Part 922—Olympic Coast National Marine

Sanctuary Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1	47.12917	-124.18389
2	47.12917	-124.97000
3	47.58472	-125.00000
4	47.66806	-125.07889
5	47.83361	-125.09500
6	47.95361	-125.48694
7	48.12583	-125.63889
8	48.25000	-125.68167
9	48.30589	-125.50081
10	48.33756	-125.38136
11	48.44617	-125.15469
12	48.45256	-125.14164
13	48.46894	-125.09775
14	48.49533	-125.00303
15	48.49894	-124.98886
16	48.50367	-124.91581
17	48.50589	-124.84053
18	48.50283	-124.78831
19	48.49344	-124.72725
20	48.46889	-124.63694
21	48.38806	-124.63694

SUBPART P – FLORIDA KEYS NATIONAL MARINE SANCTUARY

48. Revise § 922.161 to read as follows:

§ 922.161 Boundary.

The sanctuary consists of an area of approximately 2,872 square nautical miles (nmi²) (3,803 sq. mi.) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

49. Amend § 922.162 by

- a. Revising paragraphs (a) introductory text and (b); and
- b. Removing the definition of “Fish”.

The revisions read as follows:

§ 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a term appears in § 922.11 and this section, the definition in this section governs.

* * * * *

(b) Other terms appearing in the regulations in this part are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

50. Amend § 922.163 by revising paragraphs (b), (c) and (f) to read as follows:

§ 922.163 Prohibited activities—Sanctuary-wide.

* * * * *

(b) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.166 and subpart D of this part.

(c) Notwithstanding the prohibitions in this section and in § 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity

specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

* * * * *

(f) In no event may the Director issue a certification, authorization, or permit under §§ 922.10, 922.163(c), 922.166, and subpart D of this part, respectively, authorizing, or otherwise approving, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage, and any purported authorizations issued by other authorities for any of these activities within the Sanctuary shall be invalid.

* * * * *

52. Amend § 922.166 by revising paragraph (a) and removing and reserving paragraphs (e), (g), and (h) to read as follows:

**§ 922.166 Permits other than for access to the Tortugas Ecological Reserve—
application procedures and issuance criteria.**

(a) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164 if the activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(1) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road, Key West, FL 33040.

(2) For activities proposed to be conducted within any of the areas described in § 922.164 (b)–(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in §§ 922.162 and 922.164 and in the management plan for the Sanctuary.

(3) A person may conduct an activity otherwise prohibited by §§ 922.163 or 922.164, if such activity is specifically allowed by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part, and any additional permit issuance criteria and requirements in 922.166(b), (c), (f) and (i) to (m).

* * * * *

SUBPART Q – HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

53. Amend § 922.181 by revising paragraph (a) introductory text to read as follows:

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary encompasses approximately 1,032 square nautical miles (nmi²) (1,366 sq. mi.), and consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

* * * * *

54. Amend § 922.182 by revising paragraph (b) to read as follows:

§ 922.182 Definitions.

* * * * *

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

55. In Appendix A to Subpart Q of Part 922 amend section B by revising the table and amend section C by revising the table to read as follows:

Appendix A to Subpart Q of Part 922--Hawaiian Islands Humpback Whale, National Marine Sanctuary Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

* * * * *

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (*see* Figure 2).

* * * * *

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1a	Kailiu Pt., Kauai	2	22.22353	-159.58117
1b	Kailiu Pt., Kauai		22.27597	-159.59983
2a	Mokolea Pt., Kauai	2	22.22497	-159.38217
2b	Mokolea Pt., Kauai		22.24872	-159.37203
3a	Puaena Pt., N. Oahu	2	21.64017	-158.14056
3b	Puaena Pt., N. Oahu		21.60233	-158.10681
4a	Mahie Pt., N. Oahu	2	21.56036	-157.86442
4b	Mahie Pt., N. Oahu		21.59228	-157.83486
5a	Kapahulu Groin, S. Oahu	3	21.25158	-157.84097
5b	Kapahulu Groin, S. Oahu		21.26836	-157.82381
5c	Kapahulu Groin, S. Oahu		21.26839	-157.82328

6a	Makapuu Pt., S. Oahu	2	21.31100	-157.64908
6b	Makapuu Pt., S. Oahu		21.32908	-157.59614
7a	Ilio Pt, Molokai	2	21.22381	-157.31272
7b	Ilio Pt, Molokai		21.22417	-157.25400
8a	Pailolo Channel, C. Halawa to Lipoa Pt	2	21.02494	-156.63944
8b	Pailolo Channel, C. Halaw to Lipoa Pt.		21.15819	-156.71033
9a	Hanamanoia Lighthouse, Maui	2	20.57272	-156.44753
9b	Hanamanoia Lighthouse, Maui		20.58289	-156.41256
10a	3 Nmi. closure around Kahoolawe	51	20.59947	-156.49222
10b	3 Nmi. closure around Kahoolawe		20.59997	-156.49250
10c	3 Nmi. closure around Kahoolawe		20.60108	-156.49319
10d	3 Nmi. closure around Kahoolawe		20.60183	-156.49358
10e	3 Nmi. closure around Kahoolawe		20.60453	-156.49531
10f	3 Nmi. closure around Kahoolawe		20.60714	-156.49719
10g	3 Nmi. closure around Kahoolawe		20.60961	-156.49925
10h	3 Nmi. closure around Kahoolawe		20.61108	-156.50061
10i	3 Nmi. closure around Kahoolawe		20.61217	-156.50153
10j	3 Nmi. closure around Kahoolawe		20.61411	-156.50336
10k	3 Nmi. closure around Kahoolawe		20.61639	-156.50458
10l	3 Nmi. closure around Kahoolawe		20.63297	-156.50631
10m	3 Nmi. closure around Kahoolawe		20.62169	-156.50819

10n	3 Nmi. closure around Kahoolawe		20.62417	-156.51022
10o	3 Nmi. closure around Kahoolawe		20.62653	-156.51244
10p	3 Nmi. closure around Kahoolawe		20.62872	-156.51483
10q	3 Nmi. closure around Kahoolawe		20.63081	-156.51733
10r	3 Nmi. closure around Kahoolawe		20.63233	-156.51944
10s	3 Nmi. closure around Kahoolawe		20.63306	-156.52033
10t	3 Nmi. closure around Kahoolawe		20.63500	-156.52297
10u	3 Nmi. closure around Kahoolawe		20.63572	-156.52411
10v	3 Nmi. closure around Kahoolawe		20.63633	-156.52497
10w	3 Nmi. closure around Kahoolawe		20.63811	-156.52775
10x	3 Nmi. closure around Kahoolawe		20.63858	-156.52861
10y	3 Nmi. closure around Kahoolawe		20.63983	-156.53011
10z	3 Nmi. closure around Kahoolawe		20.64175	-156.53278
10aa	3 Nmi. closure around Kahoolawe		20.64350	-156.53553
10bb	3 Nmi. closure around Kahoolawe		20.64511	-156.53842
10cc	3 Nmi. closure around Kahoolawe		20.64539	-156.53903
10dd	3 Nmi. closure around Kahoolawe		20.64622	-156.54053
10ee	3 Nmi. closure around Kahoolawe		20.64764	-156.54353
10ff	3 Nmi. closure around Kahoolawe		20.64889	-156.54658
10gg	3 Nmi. closure around Kahoolawe		20.64994	-156.54975

10hh	3 Nmi. closure around Kahoolawe		20.65083	-156.55297
10ii	3 Nmi. closure around Kahoolawe		20.65111	-156.55436
10jj	3 Nmi. closure around Kahoolawe		20.65122	-156.55472
10kk	3 Nmi. closure around Kahoolawe		20.65147	-156.55586
10ll	3 Nmi. closure around Kahoolawe		20.65189	-156.55797
10mm	3 Nmi. closure around Kahoolawe		20.65239	-156.56131
10nn	3 Nmi. closure around Kahoolawe		20.65247	-156.56233
10oo	3 Nmi. closure around Kahoolawe		20.65269	-156.56378
10pp	3 Nmi. closure around Kahoolawe		20.65281	-156.56494
10qq	3 Nmi. closure around Kahoolawe		20.65306	-156.56675
10rr	3 Nmi. closure around Kahoolawe		20.65336	-156.57011
10ss	3 Nmi. closure around Kahoolawe		20.65347	-156.57344
10tt	3 Nmi. closure around Kahoolawe		20.65344	-156.57372
10uu	3 Nmi. closure around Kahoolawe		20.65350	-156.57514
10vv	3 Nmi. closure around Kahoolawe		20.65339	-156.57850
10ww	3 Nmi. closure around Kahoolawe		20.65328	-156.57992
10xx	3 Nmi. closure around Kahoolawe		20.65325	-156.58025
10yy	3 Nmi. closure around Kahoolawe		20.65314	-156.58217
11a	Technical Closure	2	20.69422	-156.61875
11b	Technical Closure		20.69583	-156.63433
12a	Upolu Pt., Hawaii (Big Island)	2	20.26814	-155.85014

12b	Upolu Pt., Hawaii (Big Island)		20.29997	-155.85478
13a	Keahole Pt., Hawaii (Big Island)	2	19.72767	-156.06186
13b	Keahole Pt., Hawaii (Big Island)		19.72819	-156.07069

C. Excluded Ports and Harbors Bounds (*see* Figure 3).

* * * * *

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
14a	Kawaihae Harbor, Big Island exclusion	2	20.03731	-155.83403
14b	Kawaihae Harbor, Big Island exclusion		20.04036	-155.83269
15a	Haleolono Harbor, Molokai exclusion	2	21.08431	-157.24961
15b	Haleolono Harbor, Molokai exclusion		21.08467	-157.24867
16a	Kaunakakai Harbor, Molokai exclusion	4	21.08719	-157.02658
16b	Kaunakakai Harbor, Molokai exclusion		21.08033	-157.03286
16c	Kaunakakai Harbor, Molokai exclusion		21.07736	-157.02811
16d	Kaunakakai Harbor, Molokai exclusion		21.08539	-157.02083
17a	Kaumalapau Harbor, Lanai exclusion	2	20.78589	-156.99228
17b	Kaumalapau Harbor, Lanai exclusion		20.78364	-156.99203
18a	Manele Harbor, Lanai exclusion	2	20.74256	-156.88692
18b	Manele Harbor, Lanai exclusion		20.74311	-156.88725
19a	Lahaina Harbor, Maui exclusion	2	20.87175	-156.67917
19b	Lahaina Harbor, Maui exclusion		20.87189	-156.67889

20a	Maalaea Harbor, Maui exclusion	2	20.79225	-156.50972
20b	Maalaea Harbor, Maui exclusion		20.79022	-156.51100
21a	Western closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28528	-157.71881
21b	Western closure Kuapa Pond (Hawaii Kai), Oahu		21.28514	-157.71861
22a	Eastern closure Kuapa Pond (Hawaii Kai), Oahu	2	21.28147	-157.71186
22b	Eastern closure Kuapa Pond (Hawaii Kai), Oahu		21.28108	-157.71119

**SUBPART R – THUNDER BAY BANK NATIONAL MARINE SANCTUARY
AND UNDERWATER PRESERVE**

56. Amend § 922.190 by revising paragraph (a) to read as follows:

§ 922.190 Boundary.

(a) Except as provided in paragraph (b) of this section, the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 3,247 square nautical miles (nmi²) (4,300 sq. mi.) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay. The eastern boundary of the sanctuary begins at the intersection of the southern Alcona County boundary and the U.S./Canada international boundary (Point 1). The eastern boundary of the sanctuary approximates the international boundary passing through Points 2-5. The boundary continues west through Point 6 and then back to the northeast until it intersects with the 45.83333°N line of latitude at Point 7. The northern boundary follows the line of latitude 45.83333°N westward until it intersects the -84.33333°W line of longitude at Point 8. The western boundary extends

south along the $-84.33333^{\circ}\text{W}$ line of longitude towards Point 9 until it intersects the ordinary high water mark at Cordwood Point. From there, the western boundary follows the ordinary high water mark as defined by Part 325, Great Lakes Submerged Lands, of P.A. 451 (1994), as amended, cutting across the mouths of rivers and streams until it intersects the line formed between Point 10 and Point 11 south of Rogers City, MI. From there the boundary moves offshore through Points 11-15 in order until it intersects the ordinary high water mark along the line formed between Point 15 and Point 16. At this intersection the boundary continues to follow the ordinary high water mark south until it intersects with the line formed between Point 17 and Point 18 near Stoneport Harbor Light in Presque Isle, MI.

* * * * *

§ 922.194 [Removed and Reserved].

57. Remove and reserve § 922.194.

58. Revise § 922.195 to read as follows:

§ 922.195 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.193 (a)(1) through (3), if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a State Permit provided that:

(1) The State Archaeologist certifies to NOAA that the activity authorized under the State Permit will be conducted consistent with the Programmatic Agreement, in which case such State Permit shall be deemed to have met the requirements of subpart D of this part; or

(2) In the case where the State Archaeologist does not certify that the activity to be authorized under a State Permit will be conducted consistent with the Programmatic Agreement, the person complies with the requirements of subpart D of this part.

(b) In instances where the conduct of an activity is prohibited by § 922.193 (a)(1) through (3) is not addressed under a State or other Federal lease, license, permit or other authorization, a person may conduct such activity if it is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued pursuant to subpart D of this part and the Programmatic Agreement.

(c) A permit for recovery of an underwater cultural resource may be issued if:

(1) The proposed activity satisfies the requirements for permits described under paragraphs (a) through (b) of this section and section 922.33;

(2) The recovery of the underwater cultural resource is in the public interest;

(3) Recovery of the underwater cultural resource is part of research to preserve historic information for public use; and

(4) Recovery of the underwater cultural resource is necessary or appropriate to protect the resource, preserve historical information, or further the policies of the Sanctuary.

(d) A person shall file an application for a permit with the Michigan Department of Environmental Quality, Land and Water Management Division, P.O. Box 30458, Lansing, MI, 48909-7958. The application shall contain all of the following information:

(1) The name and address of the applicant;

(2) Research plan that describes in detail the specific research objectives and previous work done at the site. An archaeological survey must be conducted on a site before an archaeological permit allowing excavation can be issued;

(3) Description of significant previous work in the area of interest, how the proposed effort would enhance or contribute to improving the state of knowledge, why the proposed effort should be performed in the Sanctuary, and its potential benefits to the Sanctuary;

(4) An operational plan that describes the tasks required to accomplish the project's objectives and the professional qualifications of those conducting and supervising those tasks (*see* paragraph (e)(9) of this section). The plan must provide adequate description of methods to be used for excavation, recovery and the storage of artifacts and related materials on site, and describe the rationale for selecting the proposed methods over any alternative methods;

(5) Archaeological recording, including site maps, feature maps, scaled photographs, and field notes;

(6) An excavation plan describing the excavation, recovery and handling of artifacts;

(7)(i) A conservation plan documenting:

(A) The conservation facility's equipment;

(B) Ventilation temperature and humidity control; and

(C) storage space.

(ii) Documentation of intended conservation methods and processes must also be included;

(8) A curation and display plan for the curation of the conserved artifacts to ensure the maintenance and safety of the artifacts in keeping with the Sanctuary's federal stewardship responsibilities under the Federal Archaeology Program (36 CFR Part 79, Curation of Federally-Owned and Administered Archaeological Collections); and

(9) Documentation of the professional standards of an archaeologist supervising the archaeological recovery of historical artifacts. The minimum professional qualifications in archaeology are a graduate degree in archaeology, anthropology, or closely related field plus:

(i) At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;

(ii) At least four months of supervised field and analytic experience in general North American archaeology;

(iii) Demonstrated ability to carry research to completion; and

(iv) At least one year of full-time professional experience at a supervisory level in the study of archeological resources in the underwater environment.

59. Revise Appendix A to Subpart R of Part 922 to read as follows:

Appendix A to Subpart R of Part 922—Thunder Bay National Marine Sanctuary and Underwater Preserve Boundary Coordinates

Coordinates listed in this Appendix are unprojected (geographic) and based on the North American Datum of 1983.

Point	Latitude	Longitude
1	45.20708	-83.38850
2	45.20708	-83.00000
3	44.85847	-83.00000
4	44.85847	-83.32147

SUBPART S – MALLOWS BAY-POTOMAC RIVER NATIONAL MARINE SANCTUARY

60. Revise §922.205 to read as follows:

§ 922.205 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.203 (a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Mallows Bay – Potomac River National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

61. Amend §922.206 by revising paragraphs (a) and (j) to read as follows:

§922.206 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

* * * * *

**SUBPART T – WISCONSIN SHIPWRECK COAST NATIONAL MARINE
SANCTUARY**

62. Revise §922.215 to read as follows:

§ 922.215 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.213 (a) (1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Wisconsin Shipwreck Coast National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

63. Amend §922.216 by revising paragraphs (a) and (j) to read as follows:

§ 922.216 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the effective date of sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

* * * * *